



**UNODC**

United Nations Office on Drugs and Crime

## **Mechanism for the Review of Implementation of the United Nations Convention against Corruption**

**State under Review:**

**Finland**

**Reviewing States:**

**Greece and Tunisia**

**Provisions under Review:**

**Chapter III (Criminalization and law enforcement)**

**Chapter IV (International Cooperation)**

**2010 - 2011 Cycle**

## **I. Introduction**

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

The following review of the implementation by Greece and Tunisia of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Finland and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Greece and Tunisia, by means of a telephone conference and e-mail exchanges in accordance with the terms of reference and involving Ioannis N. Androulakis (Greece), Ben Hadj Messoud Houdne (Tunisia), Brigitte Strobel-Shaw (UN Secretariat) and Stafeno Betti (UN Secretariat).

A country visit, agreed to by Finland, was conducted from 15 to 17 February 2011.

## **III. Executive summary**

### **Legal system**

When the Finnish Parliament adopts an Act on an international agreement, this latter assumes the force of law. Duly ratified international treaties form an integral part of the country's domestic legal system and find themselves on the same level as any other legislative Act: below constitutional norms and above decisions of the Council of State.

The incorporation of the United Nations Convention against Corruption (UNCAC) into the Finnish legal system was ensured by the adoption of Act no.466/2006 and Decree no. 605/2006. In principle, therefore, the Finnish competent authorities are in a position to directly apply UNCAC-based provisions.

### **Overall findings**

In Finland there is general consensus about the very low level of corruption in the country, which is explained by a combination of social, cultural and institutional factors.

The current debate focuses among others on the extent to which actions by public officials are influenced by a less manifest and blatant behaviour known as “old boys’ network”, where favours are exchanged on the basis of informal relationships.

Additionally, over the last few years some indications emerged of a rise in reported corruption cases. A number of allegations are currently being investigated. At the end of January 2011, a Member of Parliament who also served as a public official was indicted on charges of aggravated acceptance of bribes, and further prosecutorial decisions regarding at least two other members of Parliament are expected. Recent alleged cases share certain features, primarily associated with lobbying by business people providing campaign financing to politicians in municipal or national elections, or offering various forms of hospitality to public officials (trips, hospitality at restaurants, opera tickets, etc.). In 2009, the laws on campaign financing were tightened. In general, there are signs that the Finnish public (and the media) have become more critical of politicians and public officials who accept gifts.

Overall, the domestic institutions in Finland function substantially well and the main challenge for the next few years is to ensure that this situation continues. In 2002, the Ministry of Justice established an Anti-Corruption Cooperation Network, which brings together the key Governmental authorities as well as other stakeholders (representing the private sector, civil society and the research community) with a view to ensure inter-institutional coordination and awareness-raising. It is hoped that this Network will provide the driving force behind future efforts to fine-tune Finland’s legal and institutional anti-corruption machinery.

## **Criminalisation and Law Enforcement**

### Criminalisation

UNCAC-based offences are all criminalised in the Criminal Code, mostly under Chapter 16 (Offences against public authorities), Chapter 30 (Business Offences), Chapter 32 (receiving and money laundering offences), and Chapter 40 (Offences in office).

The scope of some offences goes beyond the minimum required by UNCAC. The offence of active bribery, for example, covers the solicitation or acceptance of a benefit that does not necessarily involve an official acting or refraining from acting in the exercise of his or her official duties. It is sufficient, for the offence to be committed, that the official’s behaviour might weaken public confidence in the impartiality of the conduct by public authorities.

Similarly, offences relating to bribery in the private sector go further than the Convention, in that a breach of duty is not a constituent element. It suffices that the recipient “favours” the briber or another person in his or her function or duties. The criminalization therefore is aimed both at protection the relation of trust between employer and employee and protecting free competition.

Also, in Finland any offence can be a predicate offence to money laundering, including offences committed abroad, thus going beyond UNCAC requirements that predicate offences include, as a minimum, those set forth in the Convention itself.

Among the non-compulsory conducts set forth in UNCAC, only trading in influence and illicit enrichment have not been established as offences, although due consideration was given towards criminalising them. As to trading in influence, although some Governmental authorities expressed support for its introduction, overall the concept was

deemed to be overly vague. As to the latter, the control system in place on the income and assets of public officials was deemed sufficiently stringent.

A whole chapter of the Criminal Code regulates the liability of legal persons. Finland has adopted a model of corporate liability which is primarily based on criminal law and thus is mostly in accordance with UNCAC requirements. Specifically the model of corporate liability in Finland does not hold legal persons liable for the following offences: passive bribery of public officials, embezzlement in the public and private sector, abuse of functions, and obstruction of justice. How this is applied in practice still has to be seen, as issues of corporate liability for corruption related offences are only now being considered in two court cases.

A common feature of the Finnish criminal justice system is the use of relatively mild sanctions compared with other European countries, with an emphasis on fines. The penalties for corruption-related offences are no exception to this general trend. Imprisonment is rarely used and judges have a tendency to apply sentences towards the bottom end of the penal scales established in statutes. Interestingly, statistics and criminological studies provide strong evidence that the low level of punitiveness of the criminal justice system in Finland has not lead to an increase in the commission of offences. It was pointed out that this may be the positive effect of the efficient functioning of a criminal justice system whereby individuals have little incentives to commit crimes due to the high risk of being prosecuted and of losing profits stemming from criminal behaviours.

While noting Finland's high level of compliance with UNCAC in the criminalisation area, the reviewers identified some scope for improvement as follows:

- Extend the scope of active and passive bribery of members of Parliament by covering cases where the bribe is intended to induce them to act in ways that might breach their duties, and not necessarily involving a parliamentary vote as is currently the case. However, Finland reported that on 15 March 2011, Parliament adopted amendments to this effect which still needed the signature of the President to enter into force.
- Provide for an aggravated form of bribery in respect of Parliamentarians (which currently carries a lower minimum sentence than the offence of aggravated bribery). However, Finland reported that on 15 March 2011, Parliament adopted amendments to this effect which still needed the signature of the President to enter into force
- Consider, when appropriate, exploring the possibility of constitutional changes that introduce a system for the automatic dismissal of members of Parliament in certain cases, e.g. when they are convicted for aggravated bribery.
- Ensure that the definition of "foreign official" explicitly include persons exercising a public function for a "public enterprise", thus removing possible uncertainties.
- In view of rising perceptions of instances of undue influence and connections between public official and the business community, re-consider the possibility to introduce the offence of trading in influence by examining the way in which countries with similar legal systems have criminalised such conduct.

- Consider ways to criminalise the offence of “abuse of functions” when committed by members of Parliament (this does not seem to be the case since, in Finland, members of parliament are not considered public officials).
- Continue to support discussion within the established Working Group on whether or not the criminalisation of “self-laundering” would be compatible with fundamental principles of Finnish law.
- Consider criminalising instances of obstruction of justice when the use of corrupt means, violence or threats is meant to interfere with the production of non-oral evidence (although such instances may fall under general threat offences, they carry a lower sanction than the existing offence dealing with the production of oral evidence).
- Explore the possibility of increasing the level of monetary sanctions against legal persons and add non-monetary sanctions to the list of possible penalties.

### Law enforcement

In Finland, the investigation and prosecution of corruption-related crimes follow the rules and procedures applicable to the commission of any other offence. Relevant legal texts are the Criminal Procedure Act the Pre-Trial Investigation Act, and the Coercive Measures Act.

The basic investigative functions are fulfilled by the police in a decentralised manner: the country is divided into 24 police districts, which, according to the State under review, are well capable of investigating most large and complex criminal cases, included corruption-related ones. The Finnish police are trusted by the general public. An independent survey revealed that almost all of the respondents in Finland had confidence in the police, which carry out their investigations independently of the Public Prosecutors. Only some of the most serious and complex crimes, and some cases with an international connection, would generally be transferred to a special police authority, the National Bureau of Investigation, where investigators specialize in, among others, financial and economic offences. The Finnish Financial Intelligence Unit is part of the National Bureau of Investigation.

The prosecutorial service, whose task is to present criminal cases before the courts, is an independent institution under the national Office of the Prosecutor-General. Most prosecutions are conducted on the local level, but cases of bribery and other forms of corruption can be transferred to be the responsibility of State Prosecutors working in the Office of the Prosecutor-General. One of the State Prosecutors specializes, among others, in corruption cases.

Finland’s criminal justice system is based on the principle of mandatory prosecution. Discretionary powers can be exercised, but only vis-à-vis petty offences or where prosecution would appear unreasonable. In practice, given the important public interests at stake, it would be very unlikely that prosecution would be waived in corruption-related cases.

Under the Public Officials Act, public officials suspected of an offence may be suspended from office if the investigations are deemed to influence their ability to perform their duties. Furthermore, a public official, a person elected to a public office or a person who exercises public authority shall be dismissed from office upon conviction for aggravated bribery. For lesser offences, the court has some discretion in respect of dismissal.

Regarding members of Parliament, Finnish law does not provide for the forfeiture of their seats in case of conviction for a corruption-related offence, either automatically or following court order. A special procedure under the Constitution exists, however, whereby parliamentarians may be dismissed in the event that they have been sentenced to imprisonment for a deliberate crime and the offence is such that the accused does not command the trust and respect necessary for his or her office.

Issues of freezing and confiscation are regulated in a methodical manner, and consistently with most UNCAC requirements. Confiscation, in particular, is a mandatory measure applicable to both proceeds and instruments of crime. It can be ordered for any criminal offence, including when the offender is not convicted as a result of lack of criminal capacity or is exempt from criminal liability. Value confiscation is also possible if property has been hidden or is otherwise inaccessible, and can extend to persons to whom property has been conveyed. Value confiscation is not permitted, however, if it is shown that property has been destroyed or consumed. As to pre-trial measures aimed to “safeguard” property with a view to possible confiscation, they have never been applied for any of the offences covered by UNCAC, nor have there been any other coercive measures directed against the assets of suspected persons or corporate bodies.

Investigations into economic crimes do not appear to be hindered by bank secrecy laws. Under the Police Act, police officers have extensive powers to request “any information necessary to prevent or investigate an offence, notwithstanding business, banking or insurance secrecy”(Sec.36).

Finland does not have a witness protection programme as such. Nevertheless, a certain degree of witness protection can be afforded by relying on the non-disclosure of information concerning the identity and the whereabouts of witnesses to be heard during pre-trial investigations and in court. As a relatively small and homogenous country with an extensive degree of transparency and high technology, a witness relocation programme would be very difficult to implement. In general, a pressing need for a relocation programme has not yet arisen – albeit there have been discussions about its introduction based on the identification of good practices in the EU.

The State under review is currently considering the adoption of an obligation for public officials to report corruption offences, or even a more general obligation to cover all offences. More generally, no specific whistleblower protection system is in place. To protect persons reporting offences from retaliation, Finnish authorities rely on the few provisions concerning victims and witnesses as well as provisions of administrative and labour law.

Overall, with regard to the UNCAC requirements in the area of law enforcement, the following additional observations are made:

- Consider strengthening measures for the management of frozen/seized assets in order to regulate the process more methodically and not limiting it to cases where the property is perishable and its value may rapidly depreciate.
- Strengthen measures to protect the identity of informants as in order to alleviate concerns that names of witnesses can be traced.
- Explore the possibility of establishing a comprehensive system for the protection of whistle blowers.
- Increase manpower and resources for training and capacity-building for strengthening the (currently one-man) unit of the National Bureau of Investigation

in charge of detecting corruption and supporting other law enforcement personnel in identifying, detecting and investigating corruption-related offences.

- Consider providing for the possibility of non-punishment of perpetrators of corruption offences who spontaneously and actively cooperate with law enforcement authorities.
- Consider expanding the scope of the domestic legislation on the mitigation of punishment for perpetrators of corruption offences who provide spontaneous and substantial assistance to law enforcement authorities in investigating, and collecting evidence for, offences committed by other persons involved in the same case.

### **International cooperation**

While UNCAC enjoys direct applicability in Finland some concern about the “non-self executing” provisions of the treaty remain. In this regard, Finland should continue assessing whether some UNCAC provisions require implementing legislation to make them fully operational.

#### Extradition

The conditions and procedures regulating extradition to and from Finland are found in the Extradition Act (456/1970). Another relevant law is the Act on International Cooperation in the Enforcement of Certain Penal Sanctions (21/1987). This latter, however, could not be properly assessed due to its unavailability in English.

Extradition from Finland is only possible if the conduct in question is an offence in Finland. Nationals of Finland cannot be extradited. Their surrender is only permissible within the EU and in the framework of the European Arrest Warrant.

In practice, extradition requests are rarely received. Specifically, no extradition case involving corruption-related offences has been handled by Finland’s Ministry of Justice which serves as the Central Authority.

Whenever a rejection occurred, it was normally due to procedural reasons, or to the fact that the evidence provided by the requesting State was not sufficient to prove that the sought person had committed the offence on “probable cause”. This evidentiary standard compares with the one needed for prosecutors to bring a case to court and might place too high a burden on requesting states, potentially leading to the rejection of a substantial number of requests.

While Finland does not make extradition dependant on the existence of a treaty, it is bound by the 1957 Council of Europe Extradition Convention and the multilateral agreement on extradition between Nordic countries. Currently, it is not in the process of negotiating any new extradition arrangements.

Overall, Finland has put in place most measures required by UNCAC on extradition. However the following steps could further strengthen existing extradition procedures:

- In extradition proceedings, as also highlighted in the OECD Report, May 2002, lower the evidentiary standard based on the “probable cause”.
- While recognising that Finland does not need a treaty basis in order to provide extradition, continue to explore opportunities to actively engage in bilateral and

multilateral extradition arrangements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of extradition.

- Translate the Act on International Cooperation in the Enforcement of Certain Penal Sanctions (21/1987) into English for the purpose of future reviews

### Mutual legal assistance

Finland's Act on International Legal Assistance in Criminal Matters (5 January 1994/4) is the generally applicable law defining conditions and procedures (including the identification of the Ministry of Justice as the Central Authority). The scope of application of the above Act includes any criminal offence, whether the request comes from abroad or is addressed to a foreign country.

In practical terms, the execution of a request for MLA by Finland is easier when it originates from another Nordic country. Among the Nordic countries, for example, no obstacles in the admissibility of evidence is encountered. Instead, the prompt and effective execution of requests originating in other countries depends on various factors, including from which country the request emanates, and the specificities of the case. The Finnish authorities, for example, mentioned the exceptionally high level of cooperation with Estonia as a neighbouring country. .

Overall, cases of corruption requiring international assistance on the part of Finland have been few. There has only been a small number of requests received which were based on UNCAC, including from non-European countries, and were in most cases executed within a timeframe of one to five months.

In addition to the European Convention on Mutual Assistance in Criminal Matters and the EU legal framework on MLA, Finland is bound by bilateral agreements with: Australia, Poland, Hungary, Ukraine, the Russian Federation, and the United States of America.

Overall, Finland has in place all measures required by UNCAC for mutual legal assistance. However, Finland may wish to continue exploring further opportunities to actively engage in bilateral and multilateral arrangements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of mutual legal assistance.

### Law enforcement cooperation

Finland reported an exceptional high level of cooperation with other Nordic countries based, among others, on the 1972 Agreement on cooperation among Nordic police authorities (revised in 2002). Furthermore, the Nordic police forces have set up a joint network of liaison officers around the world. A liaison officer for any of the Nordic countries may act on behalf of the police of any of the other Nordic countries.

Outside the EU, cooperation takes place on an ad hoc basis. Interpol is used as the main channel. Parallel to this, Memoranda of Understanding have been prepared with the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Russian Federation and Turkey, and are being prepared with China, Serbia and Vietnam with. Finland also considers UNCAC as a possible basis for mutual law enforcement cooperation.



Finnish Police Liaison Officers are posted in various countries and international organizations. In particular: Five liaison officers are posted in the Russian Federation, one each in Estonia, Spain and China, two at Europol (in the Hague) and one at Interpol (in Lyon).

Domestically, Finland has developed internationally recognized good practice in the form of cooperation between the police, customs and the border guards. This cooperation is based on the legal powers of the three bodies to act on behalf of one another, and to exchange information with one another.

Finally, Finland is one of the most experienced users of joint investigation teams in the EU. Since 2004, it has taken part in a total of 28 such teams, three of which have been established so far to investigate corruption-related offences.

Finland has thus been found to have successful practices in place in the field of international law enforcement cooperation.

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

Finland signed the Convention on 9 December 2003 and ratified it on 8 June 2006. Finland deposited its instrument of ratification with the Secretary-General on 20 June 2006.

### **B. Legal system of Finland**

According to Section 95 of the Constitution (Bringing into force of international obligations) “the provisions of treaties and other international obligations, in so far as they are of a legislative nature, are brought into force by an Act. Otherwise, international obligations are brought into force by a Decree issued by the President of the Republic. A Government bill for the bringing into force of an international obligation is considered in accordance with the ordinary legislative procedure pertaining to an Act [...] General provisions on the publication of treaties and other international obligations are laid down by an Act”.

Moreover, an international agreement brought into force by an Act of Parliament finds itself on the same level as any other legislative Act: below constitutional norms and above decisions of the Council of State.

In principle, if the international norms are sufficiently detailed, the competent Finnish authorities are in a position to directly apply them without the need to adopt implementing legislation.

The incorporation of the United Nations Convention against Corruption (UNCAC) into the Finnish legal system, in particular, was ensured by the adoption of Act no.466/2006 and Presidential Decree 58/2006.

## C. Implementation of selected articles<sup>1</sup>

### Chapter III. Criminalization and law enforcement

#### **Article 15. Bribery of national public officials**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State party under review has provided the text of Chapter 2 section 7, Chapter 16 sections 13, 14 and 14a of the Finnish Criminal Code with regard to article 15a of the Convention (active bribery of public officials) and the text of Chapter 40, sections 1 through 4 of the Finnish Criminal Code with regard to article 15b of the Convention (passive bribery of public officials).

It has also provided all available statistical data on the number of persons convicted for active or passive bribery involving public officials from 1925 until 2007, cases reported from 2000 to 2010, as well as information on the interpretation of the above provisions, on the application of the relevant offences in practice and on certain recent bribery cases.

Some supplementary information is contained in the GRECO Third Round Evaluation Report of Finland and in related documents, as well as in a paper by the Ministry of Justice in Finland, titled “Corruption and the Prevention of Corruption in Finland”.

Finally, the reviewers were made aware by the State party under review of a link to the OECD website ([www.finlex.fi](http://www.finlex.fi)) where one can find parts of the Criminal Code of Finland translated in English, which included amendments up to 2008.

Additional relevant information and clarifications with regards to the implementation of article 15 were given to the review team as follows:

- The offence of active bribery requires that the bribe is given in exchange for or in order to influence “the actions in service” of the public official. It was not immediately clear if by “actions” one also means cases where the official refrains from acting. However it was confirmed during the country visit, that nonfeasance is included. An alternative translation of the Finnish text would be that the bribe is given “for how the public official conducts himself / herself in office ...” In this alternative translation, it is clearer that the conduct can be nonfeasance, misfeasance or malfeasance.

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<sup>1</sup> The full texts of cited legal documents, as well as relevant data, are to be found in the Appendix.

- In the provisions provided, it is not specified whether cases of indirect active or passive bribery, i.e. cases involving intermediaries, are covered. However, Chapter 5 sections 4 through 6 of the Criminal Code, which regulate indirect commission and participation in criminal offences, read as follows:

*“Section 4 – Commission of an offence through an agent: A person is sentenced as a perpetrator if he or she has committed an intentional offence by using, as an agent, another person who cannot be punished for said offence due to the lack of criminal responsibility or intention or due to another reason connected with the prerequisites for criminal liability. Section 5 – Instigation: A person who intentionally persuades another person to commit an intentional offence or to make a punishable attempt of such an act is punishable for incitement to the offence as if he or she was the perpetrator. Section 6 – Abetting: (1) A person who, before or during the commission of an offence, intentionally furthers the commission by another of an intentional act or of its punishable attempt, through advice, action or otherwise, shall be sentenced for abetting on the basis of the same legal provision as the perpetrator. (...).”*

These general provisions remove any obstacles in prosecuting bribery offences involving intermediaries.

- The mental element of the offence is not explicitly mentioned in the bribery provisions. However, it can be safely assumed that actions committed intentionally are covered, given that according to Chapter 3 section 5 of the Finnish Criminal Code,

*“(1) Intent or negligence are prerequisites for criminal liability. (2) Unless otherwise provided, an act referred to in this Code is punishable only as an intentional act.”*

- Sanctions for active bribery range from a fine to two years imprisonment and, in case the offence is considered aggravated, from four months to four years imprisonment. With regard to passive bribery, there are three levels of sanctions: “Bribery violation”, which is the least serious form, may be sanctioned with a fine or up to six months imprisonment; “bribery” may be sanctioned with a fine or up to two years imprisonment and can lead to dismissal of the public official; and “aggravated bribery” carries a sanction of imprisonment between four months and four years and leads to dismissal from office. As explained by the State under review, dismissal is also possible for members of municipal councils (or other equivalent bodies).

#### **(b) Observations on the implementation of the article**

Based on the information provided, the following findings have been made:

- The concept of “public official”, as defined in the Criminal Code (Chapter 16 section 20 par. 3, 5, Chapter 40 section 11 par. 1-3 and 5, section 12 par. 1-2 and section 13), corresponds largely to the definition of article 2 of the Convention, covering all persons holding an executive, administrative and judicial office, elected officials and other persons performing a public function or providing a public service, including employees of public enterprises and soldiers. The bribery of members of Parliament, who are not considered as public officials, is regulated separately in Chapter 16 section 14a and Chapter 40 section 4 of the Criminal Code.

- The required elements of the offences of active and passive bribery (promise, offering or giving / solicitation or acceptance of an advantage) are expressly contained in the relevant criminal law provisions. The offence covers instances where no gift or other benefit is actually offered.

- The law speaks of “a gift or other benefit”, covering thus instances where intangible items or non-pecuniary advantages are offered. The law also explicitly mentions benefits

“intended for him/her or for another”, thus covering benefits for third persons (such as a relative) or entities (such as a political organization).

- With respect to the element of an “undue” advantage, the provisions concerning active bribery do not specify that the gift or other benefit must be “undue”, going thus further than the Convention. Any benefit may come under the scope of the offence if its purpose is to influence a public official’s action in the exercise of his or her official duties. The provisions concerning passive bribery specify that in some cases the benefit must be “unjustified” or “unlawful” (when the public official asks for it for his/her actions while in service or independently of them). Again, however, the law goes beyond what is required by the Convention, even covering the solicitation or acceptance of a benefit that does not involve the official acting or refraining from acting in the exercise of his or her official duties. It is sufficient if the officials’ behaviour might weaken public confidence in the impartiality of the actions of the authorities.

- There was initially some doubt in respect of the effectiveness and proportionality of sanctions for bribery, given the fact that, according to Article 30 par. 1 of the Convention, “each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.” The Finnish police seem to share the opinion that more severe measures might be helpful. However, the majority of the representatives of the country under review have convincingly argued that effectiveness and proportionality are matters that must be considered in the light of the overall system of sanctions in a country. From the 1970s through to the 1990s, Finland undertook a complete reform of its criminal law, in connection with which the overall level of sanctions was reviewed, and the penal latitude for each individual offence was, where necessary, adjusted so that it fit into the system as a whole. As a matter of fact, in comparison with other countries the Finnish criminal justice system uses relatively mild sanctions with an emphasis on fines. Additionally, imprisonment is only rarely used (when a prison sentence is imposed it is often suspended and there are only about 3000 prisoners in Finnish prisons out of a total population of 5,4 million) without this having, as it seems, an adverse effect on the implementation of national criminal justice policy and on keeping a low rate of corruption offences (there is a high risk of getting caught and lose any profits from the criminal behaviour).

There was general recognition that applicable penalties are low compared to European standards, although they appear to be adequate within Nordic societies. Moreover, judges have a tendency to apply the minimum sentences foreseen in statutes. Sentencing statistics on bribery are difficult to establish since judges often have to combine penalties for bribery and other economic crimes and come up with a combined penalty

In light of the above, the reviewers were satisfied with the foreseen level of sanctions.

- In practice, individuals in Finland are only sporadically charged with the offences in question due to the very low number of bribery cases involving public officials (some 10 cases per year in average, among several hundred cases of offences in office). No case law exists on bribery of parliamentarians. There is some public impression of a rise of corruption cases during the last few years and a number of allegations are currently being investigated by the National Bureau of Investigation. At the end of January 2011, a Member of Parliament who also served as a public official was indicted on charges of aggravated acceptance of bribes (the conduct in question was alleged to be connected with his role as a public official, not as a Member of Parliament), and further

prosecutorial decisions regarding at least two other members of Parliament are expected. In general, recent alleged cases share certain features, primarily associated with lobbying. Persons in the private sector have either provided campaign financing to politicians in municipal or national elections, or they have provided various forms of hospitality to public officials (trips, hospitality at restaurants, opera tickets and the like). In 2009, the laws on campaign financing were tightened. In general, there are clear signs that the Finnish public (and the media) have become more critical of politicians and public officials who accept gifts. However, as of today no court decisions have been handed down.

In view of the above, it can be concluded the Finnish Criminal Code criminalizes active and passive bribery of public officials in accordance, for the most part, with article 15 of the Convention. Only a few points with regard to the bribery of Parliamentarians still need to be addressed:

- The offences of active and passive bribery of a Member of Parliament (Chapter 16 section 14a and Chapter 40 section 4 of the Criminal Code) fall short of the requirements of the Convention. They only apply in cases where the benefit is promised, offered, given etc. so that the Member of Parliament “in exchange for the benefit and in his/her parliamentary mandate acts so that a matter being considered or to be considered by Parliament would be decided in a certain way”. This does not seem to cover cases where the bribe is intended to cause the member of Parliament to act or refrain from acting in other ways that might breach the duties of his/her mandate, that do not involve a parliamentary vote, e.g. during considerations of whether to raise an issue in Parliament, during work in Parliamentary committees etc.
- Active and passive bribery of Members of Parliament is sanctioned with a fine or imprisonment of at most four years. The law does not provide for an aggravated form of bribery in respect of Parliamentarians. On the contrary, the bribery of a Member of Parliament carries all in all lesser sanctions (fine or imprisonment for at most four years) than the offence of aggravated bribery (imprisonment between four months and four years and dismissal from office for the corrupt official). Furthermore, contrary to what happens with public officials or even members of municipal councils, the court may not deprive a Member of Parliament of his / her mandate, because this is an elective office and it is considered that it is primarily a matter for the electorate to decide who it wants as a representative. There is however a possibility (according to Section 28(3) of the Finnish Constitution) for the Parliament itself to dismiss a MP from his or her office, if the offence is considered such that the accused does not command the trust and respect necessary for the exercise of his or her duties.

The reviewers were made aware that the above shortcomings have not escaped the attention of Finnish lawmakers and that, in recent discussions, the question has been raised why there needs to be any difference between chapter 40, sections 13 and 14a of the Criminal Code. In June 2010, the Government submitted a new proposal to Parliament (no. 79/2010) regarding some amendments to the criminalization of corruption-related offences. One amendment would indeed bring the definition of the active and passive bribery of a Member of Parliament in line with the more general provisions. Another would raise the penalty of imprisonment to the standard that applies to normal public officials. It is recommended that this initiative is pursued to the end, all the more so since it was reported that the constitutional affairs committee

is not progressing fast on this matter, with the risk that the issue will not be discussed before plenary.

Introducing the automatic dismissal of Members of Parliament, e.g. in cases they are convicted for aggravated bribery, is also a measure that could be considered, although it seems that this would also require an – understandably difficult to attain – change in the Finnish Constitution.

#### **Article 16. Bribery of foreign public officials and officials of public international organizations**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State party under review has provided the text of Chapter 16 section 20 of the Finnish Criminal Code regarding active bribery of foreign public officials and Chapter 40 sections 11 and 12 regarding passive bribery of foreign public officials.

Some supplementary information is contained in the GRECO Third Round Evaluation Report of Finland and in the OECD Phase 2 and Phase 3 Reports, which were sent to us by the Secretariat.

Additional relevant information and clarifications with regards to the implementation of article 16 were given to the review team as follows:

- According to Chapter 16 section 20 par. 3 of the Criminal Code, sections 13 and 14 of the same chapter regarding active bribery of public officials also apply to active bribery of a foreign public official. Furthermore, Chapter 40 section 12 indicates that the provisions of the Criminal Code criminalizing passive bribery of public officials (Chapter 40, sections 1 through 3) also apply to foreign public officials. The Finnish bribery offences are much broader than the ones described in (the non-mandatory) par. 2 and especially par. 1 of Article 16 of the Convention, covering also cases not involving a breach of duty and cases where the bribe was not intended to “obtain or retain business or other undue advantage in relation to the conduct of international business”.

- Foreign bribery offences apply regardless of whether or not the gift or other benefit is “undue”. Furthermore, as is the case with bribery offences involving public officials, bribes given in exchange for omissions are also covered. Finally, Finnish law does not require that bribery of foreign public officials constitutes an offence under the domestic law of the concerned foreign country.

- The concept of “foreign public official” is defined in Chapter 40 section 11 par. 4 of the Criminal Code in a manner that corresponds largely to the definition of Article 2 (b) of

the Convention, including officials of any other country (even ones that are not State parties) and leaving out only foreign members of Parliaments which are regulated separately.

- Regarding members of Parliament, the relevant Finnish provisions also apply to members of foreign parliaments. This follows from Chapter 16, section 20 par. 4 (active bribery) and from Chapter 40 section 12 par. 4 (passive bribery). According to the definition of Chapter 40 section 11 par. 6 of the Criminal Code “a member of a foreign Parliament is defined as a person who is a member of the Parliament of a foreign state or of an international parliamentary assembly”.

- As to the active bribery of an official of a public international organization, some confusion may be at first created by the fact that Chapter 16, section 20 par. 3 of the Criminal Code does not explicitly include such officials. Nevertheless, the definition of a foreign public official in chapter 40, section 11 par. 4, dealing with “offences in office“, encompasses officials of public international organizations and is applicable throughout the whole law.

- The sanctions described under bribery of domestic officials or Parliamentarians apply also to the bribery of foreign public officials and members of foreign Parliaments, with the exception of removal from office.

- There does not seem to be any case law on active and passive bribery of foreign public officials or officials of public international organizations. However, there are active criminal investigations and a definite movement towards applying the relevant provisions in practice.

#### **(b) Observations on the implementation of the article**

In view of the above, and despite the problems stemming from the many cross-references in the relevant sections of the Criminal Code, the review team concluded that Article 16 of the Convention is almost fully implemented. Only the following points still need to be addressed:

- The reservations expressed in the previous section with regard to the bribery of Parliamentarians also apply to the way the bribery of foreign members of Parliament and international parliamentary assemblies is criminalized.
- The definition of a “foreign official” does not explicitly include persons exercising a public function for a “public enterprise”. There is mention of persons “who otherwise attend to a public function on behalf of a body or court of a foreign state”, leaving thus room for uncertainty.

#### **Article 17. Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State party under review has provided the text of Chapter 28 section 4 and Chapter 40 sections 7 to 9 of the Finnish Criminal Code. It has also provided extensive clarifications regarding the interpretation of these provisions. Further relevant information was also made available to the reviewers as follows:

- Embezzlement/misappropriation is criminalized in Chapter 28 section 4 of the Criminal Code. This provision includes the standard elements of the relevant offences (appropriation of assets or things of value which are or have come in any way in the possession of the offender) including cases where the property was entrusted to a public official by virtue of his or her position. The term “diversion”, also used in the Convention, can be understood as covered by or synonymous with the terms “embezzlement and misappropriation” (see A/58/422/Add.1, para. 30).
- Although it is not explicitly stated that the offence of embezzlement covers instances where the relevant acts are for the benefit of a person or entity other than a public official, it has been confirmed that this is indeed the case.
- The mental element of the offence is not explicitly included in the relevant provisions. However, as explained in the section referring to bribery offences, actions committed intentionally are fully covered according to the General Part of the Finnish Criminal Code.
- The concept of “assets or other movable property” used in the Finnish law does not correspond exactly to the concept of “any property, public or private funds or securities or any other thing of value” used in the Convention, since according to Article 2 (d) of the latter, “property” means “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.” While incorporeal or intangible assets might be deemed to be included under the term “movable property”, the same does not apply to immovable assets which are outside the scope of the Finnish provision. In Finnish criminal law a person can only embezzle something that is in his or her possession so that it is impossible for a public official to embezzle immovable assets. However, the public official may try to misappropriate or otherwise divert immovable assets for example by forging a deed of ownership or by making a false entry into a public register. Such conduct would be covered by Chapter 33, section 1 (forgery), section 2 (aggravated forgery) and section 3 (petty forgery) of the Criminal Code, or, most likely, by the provisions regarding fraud. Noting that article 17 calls for the criminalization of “embezzlement, misappropriation or other diversion”, it is accepted that such conduct is covered by Finnish criminal law.

#### **(b) Observations on the implementation of the article**

Based on the information provided, the following findings have been made:

- According to the State under review, if the offender is a public official, Chapter 28 section 5 par. 3 of the Finnish Criminal Code (aggravated embezzlement) would in many cases apply. This Chapter refers to cases where “the offender takes advantage of his/her position of particular responsibility”. Indeed, this provision seems to cover cases where a public official embezzles property that was entrusted to him/her “by virtue of his or her position”.

Some concerns were raised by the fact that the above provision of Finnish law also requires that “the embezzlement is aggravated, also when assessed as a whole” – a generic requirement which is at first glance unclear as to its meaning and might well lead to the exclusion of cases involving public officials. These concerns were



exacerbated by the fact that, according to section 6 of Chapter 28, “if the embezzlement, when assessed as a whole, with due consideration to the value of the appropriated property, the amount of assets unjustifiably used or the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for petty embezzlement to a fine.” However, as was pointed out by the State under review, since the legislator has specifically made reference to the offender utilizing his or her position of trust, it should be expected that this would automatically tilt the assessment in the direction of an aggravated offence. Thus, although it is true that the mere fact that the embezzlement is committed by a public official is not sufficient grounds to qualify the offence as aggravated – after all, the property at issue may be worth only a few Euros and be of little value to its owner – what would be regarded as “ordinary” embezzlement if committed by an “ordinary” citizen would more likely be regarded as aggravated embezzlement if committed by a public official. It is left to the courts to make the over-all determination.

- As was the case with the offence of bribery of domestic public officials, there was initially some doubt in respect of the effectiveness and proportionality of the penalties provided for (a fine for petty embezzlement, a fine or imprisonment for at most one year and six months for simple embezzlement and imprisonment for at least four months and at most four years for aggravated embezzlement), taking into account the fact that, as explained above, the law does not provide for an aggravated form of embezzlement in case a public official is involved (e.g. “embezzlement in office”). The need for such an offence, explicitly covering public officials (if it existed it would be situated not in Chapter 28, but in Chapter 40 of the Criminal Code, together with the other “offences in office”) might also be surmised by the existence of Article 22 of the Convention, which regulates separately embezzlement of property in the private sector.

However, these doubts were removed by the State under review which argued that: a) the overall levels of punishment used by the Finnish criminal justice system are low without adverse effects on the implementation of criminal justice policy, b) UNCAC only requires that the covered conduct be criminalized. It is up to the State Party to determine the best way to meet the obligation – either a separate provision on “embezzlement in office” or a construct such as the one used by Finland, which combines a generic offence of embezzlement with a provision that refers to a position of particular responsibility. c) a separate provision on “embezzlement in office” in Chapter 40 on offences in office was deemed unnecessary, since the public official would be judged not only in accordance with the basic provision on embezzlement but *also in accordance with the applicable provisions on misuse of office*. More specifically, diversion of property by a public official may also constitute an abuse of public office (Chapter 40 section 7), an aggravated abuse of public office (Chapter 40 section 8), or a violation of official duty (Chapter 40 section 9). These offences require that the official “violates his/her official duty based on the provisions or regulations to be followed in official functions” (Chapter 40 section 7 par. 1 (1) and section 9 par. 1). However, such provisions and regulations are not linked only to the exercise of the specific service activities of the official in the context of his/her material and topical competence, but can also relate to his/her general conduct and his/her general obligations as an official. Thus, cases of misappropriation or diversion of funds might well fall under the above offences of abuse of public office (simple or aggravated) or violation of official office. As a result, if a public official embezzles property, he or she would be sentenced in accordance with *both* the provisions on embezzlement and the provisions on abuse of office (concurrency of offences). This

means, in effect, that the punishment would tend to be higher than for ordinary citizens.

In view of the above, one can conclude that the provisions of the Finnish Criminal Code criminalize the embezzlement, misappropriation or other diversion of property by a domestic public official in accordance with article 17 of the Convention.

### **Article 18. Trading in influence**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided information on how the measure described in Article 18 was considered but not adopted.

According to the information provided, the Finnish Ministry of Justice did indeed give serious consideration to the criminalization of “trading in influence”. Additionally, the National Bureau of Investigation expressed support for such a provision. However, following consultation with experts and with Parliament, it was decided that the concept of “trading in influence” was overly vague, and not in keeping with the level of clarity and predictability required in the drafting of criminal law. For this reason, the idea of criminalising such offence has for the time being been abandoned – although this is not necessarily the final word and it is possible that the proposal will be resuscitated.

#### **(b) Observations on the implementation of the article**

In view of the above and given the non-mandatory nature of the provision, the reviewers are satisfied that Finland has fulfilled its obligations from Article 18. However, given the rising perception among the Finnish population of instances of undue influence and of the existence of undue connections between persons in public office and business (53% of Finns have been quoted as believing there is a too large a gray area of undue influence and lobbying), the Finnish authorities may still wish to examine legislation in other countries with similar legal systems to examine the manner in which the relevant offence has been introduced.

### **Article 19. Abuse of functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided the text of Chapter 40 sections 7 to 9 of the Finnish Criminal Code. These provisions can be found above under Article 17. Finland has also provided statistical data on the number of cases reported from 2000 to 2010. As explained in the section referring to bribery offences, actions committed intentionally are fully covered according to the General Part of the Criminal Code.

### **(b) Observations on the implementation of the article**

Based on the information provided, the following findings have been made:

- The offence of abuse of public office contains all the necessary elements of the offence according to the requirements of the Convention, namely the violation of laws by the official in the discharge of his/her functions and the purpose of obtaining an undue advantage for himself/herself or for another. The Finnish law, in Chapter 40 section 7 par. 1 (1) and section 9 par. 1, goes even further than that, covering also cases where the official does not seek an “undue” advantage or any advantage at all, as well as cases where the purpose is only to cause detriment or loss to another.
- As with previous offences in office and bearing in mind Article 30 par. 1 of the Convention, there was initially some doubt in respect of the effectiveness and proportionality of the penalties provided for (a fine or imprisonment for at most one year and dismissal from office for violation of official duty, a fine or imprisonment for at most two years and dismissal from office for simple abuse of office and imprisonment for at least four months and at most four years and dismissal for aggravated abuse of public office), which was removed by taking into account the overall level of punishment used by the Finnish criminal justice system.
- The offences in question appear regularly in practice, with around 30 cases and 40-50 offences reported each year.

In view of the above, the provisions of the Finnish Criminal Code cited criminalize the abuse of functions by a domestic public official in accordance for the most part with article 19 of the Convention. Only the following point still needs to be addressed:

- A member of parliament is not considered a public official in Finland, as has been observed in the section above referring to bribery of public officials. Therefore the abuse of functions by Parliamentarians is not covered.

### **Article 20. Illicit enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided information on how the measure described in Article 20 was considered but not adopted.

As explained by the State under review, the criminalization of the behaviour in question was seriously considered by the Ministry of Justice and a genuine effort was made to assess whether the introduction of the relevant offence would be compatible with the Finnish legal system. The discussions led to the conclusion that the existing provisions of Chapter 40 of the Criminal Code, which deal with offences in office, are sufficient to

cover the conduct in question. More importantly – given the fact that Chapter 40 does not really cover cases where the enrichment of a public official proves so disproportionate to his or her lawful income that a prima facie case of corruption could be made – control of the income and assets of public officials has been deemed to be sufficiently stringent, since the salary and taxation of public officials are matters of public record. The system also seems to work well in practice. A final argument against criminalization of illicit enrichment was based on fundamental principles of justice of the Finnish criminal justice system and concerned illicit enrichment as an offence that in effect reverses the burden of proof. Once the prosecutor presents evidence that the defendant has greater assets than can be accounted for by his/her salary and other legal income, it is then up to the defendant to prove that these assets were acquired legally. This reversal of the burden of proof in a criminal case was not regarded as acceptable.

**(b) Observations on the implementation of the article**

In view of the above and given the non-mandatory nature of the offence, Finland has fulfilled the obligations stemming from Article 20.

**Article 21. Bribery in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided the text of Chapter 30 section 7 of the Finnish Criminal Code regarding active bribery in the private sector and Chapter 30 section 8 regarding passive bribery in the private sector. It has also provided clarifications regarding the interpretation of these provisions, as well as statistical data on the number of reported cases from 2000 to 2010. The additional following information is relevant to the implementation of article 21:

- Although the extent to which cases of indirect active or passive bribery are covered is not specified, Chapter 5 sections 4 through 6 of the Criminal Code remove any obstacles in prosecuting bribery offences involving intermediaries, as explained already in the section referring to bribery in the public sector.
- It was not immediately clear if non-profit legal entities or foundations were covered in all cases in which they engage in economic, financial or commercial activities. The State under review confirmed this to be the case.
- As explained in the section referring to bribery offences in the public sector, actions committed intentionally are fully covered according to the General Part of the Criminal Code.

- The sanctions in respect of bribery in the private sector are a fine or up to two years imprisonment.

### **(b) Observations on the implementation of the article**

Based on the information provided, the following findings have been made:

- The Finnish law contains the required elements of the offences of active and passive bribery (promise, offering or giving / solicitation or acceptance of an advantage). The offences cover tangible and intangible advantages, whether pecuniary or non-pecuniary, as well as instances where no gift or other benefit is actually offered. The Finnish provisions specify that the advantage must be an “unlawful benefit” (section 7) or a “bribe” (sections 7-8), which corresponds to the concept of “undue advantage” contained in the Convention. The law also explicitly mentions benefits “intended for the recipient or another”, thus covering benefits for third persons (such as a relative) or entities (such as a political organization).

- With regard to the recipients of the bribes, sections 7 and 8 of Chapter 30 cover persons “in the service of a business”, “members of the administrative board or board of directors, the managing director, auditor or receiver of a corporation or of a foundation engaged in business” and “persons carrying out a duty on behalf of a business”. The Finnish provisions are thus in compliance with the Convention, which applies to any person who directs or works, in any capacity, for a private sector entity, independent of his/her position.

- The Finnish provisions go further than the Convention, in that a breach of duty is not required. It suffices if the recipient “favours” the briber or another person in his or her function or duties. The criminalization therefore is aimed both at protecting the relation of trust between employer and employee and protecting free competition. What is important is the recipient of the briber favouring the briber over someone else, independently of whether the obligations of the recipient towards his/her employer have been damaged.

- In practice, very few cases involving the application of the present provisions are reported and investigated (on average 2 per year)

In view of the above, the provisions of the Finnish Criminal Code cited criminalize bribery in the private sector in accordance with Article 21 of the Convention.

### **Article 22. Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided the text of Chapter 28 sections 4-6 of the Finnish Criminal Code, as well as clarifications on the interpretation of these provisions. The following additional information is relevant to the implementation of article 21:

- The provisions on embezzlement include the standard elements of the relevant offence (appropriation of assets or things of value which are or have come in any way in the

possession of the offender), including cases where the property was entrusted to a person who directs or works in a private sector entity, by virtue of his or her position. Also included are cases where the embezzlement takes place in the course of economic, financial or commercial activities.

- As is the case with respect to Article 17, there was concern that the concept of “assets or other movable property” used in the Finnish law does not include immovable assets, despite the fact that these are included in the definition of “property” in Article 2 (d) of the Convention. However, as explained in connection with article 17, a person “entrusted” with immovable property cannot assume ownership of it without some form of fraud, forgery or false entry into a public register, all of which are criminalized under Finnish law.

- As explained in the section referring to bribery offences in the public sector, actions committed intentionally are fully covered according to the General Part of the Criminal Code.

- The sanctions range from a fine for petty embezzlement and a fine or imprisonment for at most one year and six months for simple embezzlement to imprisonment for at least four months and at most four years for aggravated embezzlement

#### **(b) Observations on the implementation of the article**

In view of the above, the Finnish Criminal Code appears to criminalize the embezzlement of property in the private sector in accordance with article 22 of the Convention.

#### **Article 23. Laundering of proceeds of crime**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

*(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; [note indentation]*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article. [note indentation]*

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute*

*predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence. [note indentation]*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided sections 1 to 9 of Chapter 32 as well as the whole of Chapter 5 of the Criminal Code. Chapter 32 sections 6 to 10 of the Criminal Code contain provisions on money laundering (ML), aggravated ML, conspiracy for the commission of ML, petty ML violations, and even negligent ML (which goes further than the requirements of the Convention).

The State under review has also provided extensive clarifications on the interpretation of these provisions, which can be summarized as follows:

- Article 23 par. 2 (c) of the Convention establishes that dual criminality is necessary for offences committed in a different national jurisdiction to be considered as predicate offences. In this respect, the State under review confirmed that, in order to be punishable in Finland, the predicate offence must be punishable in the State where it was committed

- An interpretative note for the Convention (A/58/422/Add.1, para. 32) states that “money-laundering offences established in accordance with this article are understood to be independent and autonomous offences and that a prior conviction for the predicate offence is not necessary to establish the illicit nature or origin of the assets laundered. The illicit nature or origin of the assets and, in accordance with article 28, any knowledge, intent or purpose may be established during the course of the money-laundering prosecution and may be inferred from objective factual circumstances”. The State under review confirmed that this is indeed the case in Finland.

- Section 11 of Chapter 32 of the Finnish Criminal Code provides, as a rule, that a person living in a joint household with the offender, and who only used or consumed property obtained by the offender for ordinary needs in the joint household cannot be sentenced for ML. This exemption is not foreseen in the Convention. However, the State under review has adequately explained that this provision was inserted into the law to allow for considerations of equity, and thus complies with fundamental principles of justice. If a person commits an offence – sells drugs, steals property and so on – and he or she uses the proceeds to pay for the rent or buy food, it is regarded as inequitable to punish anyone living in his or her household for continuing to use the residence, or for eating the food put on the table. Moreover, in such minor cases it would often be difficult to prove that this other person knew that the money was the proceeds of crime. The above exemption was reported to be used restrictively, in cases where the sums were indeed small. According to a recent Supreme Court precedent (Supreme Court decision 2009:59), a common-law spouse of a person who had committed aggravated drug offences was herself convicted of money laundering, on grounds that she had “participated in different ways in using the proceeds of crime”. In practice, and by way of example, a person may continue to live in the apartment and eat food without committing an offence by doing so,



but if one goes on an expensive trip to an exotic destination, this person will commit the offence in question.

- As explained in the section referring to bribery offences in the public sector, actions committed intentionally appear to be fully covered according to the General Part of the Criminal Code.

- The Finnish penal provisions threaten petty ML violations with a fine, simple ML and negligent ML with a fine or imprisonment for at most two years, aggravated ML with imprisonment for at least four months and at most six years and conspiracy to commit aggravated ML with a fine or imprisonment for up to one year. Sanctions for the receiving offence range a fine (petty receiving), a fine or imprisonment for at most six months (negligent receiving) and a fine or imprisonment of at most one year and six months (simple receiving) to imprisonment for at least four months and at most four years (aggravated receiving) and imprisonment for at least four months and at most six years (professional receiving).

- The State under review confirmed having furnished to the Secretary-General of the United Nations copies of its laws giving effect to Article 23.

#### **(b) Observations on the implementation of the article**

Based on the information provided, the following findings have been made:

i) The provisions of the Finnish Criminal Code mostly criminalize the laundering of proceeds of crime in accordance with article 23 of the Convention. More specifically:

- What is required by article 23 par. 1 (a) (i) of the Convention is adequately covered by section 6 par. 1 (1) of Chapter 32 of the Criminal Code, which refers to the conversion or transfer of “property acquired through an offence, the proceeds of crime or property replacing such property”, and thus extends to any type of property, regardless of value, that directly or indirectly represented the proceeds of crime. Thus, Finnish law also takes into account Article 2 (e) of the Convention, according to which the term “proceeds of crime” means “any property derived from or obtained, directly or indirectly, through the commission of an offence”.
- Article 23 par. 1 (a) (ii) of the Convention requires the establishment of a second, broader offence, which is adequately covered by section 6 par. 1 (2) of Chapter 32 of the Criminal Code.
- Article 23 par. 1 (b) (ii) requires the criminalization, subject to the basic concepts of the legal system of the State party, of participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences mandated by the Article. As to participation, and aiding, abetting, facilitating and counselling, these are covered by the general provisions of Chapter 5 of the Criminal Code, regulating complicity, instigation and abetting. According to section 3 of this Chapter, if two or more persons have committed an intentional offence together, each is punishable as an offender. According to section 5, a person who intentionally persuades another person to commit an intentional offence or to make a punishable attempt at such an act is punishable for incitement to the offence as if he/she was the offender. According to section 6, a person who, before or during the commission of an offence, intentionally furthers the commission by another of an intentional act or of its punishable attempt, through advise, action or otherwise,



shall be sentenced for abetting on the basis of the same legal provision as the offender. Incitement to punishable aiding and abetting is punishable as aiding and abetting.

In addition, Chapter 17 section 1 a of the Criminal Code criminalizes participation in a criminal organization with the aim of committing one or more ML offences. Chapter 32 section 6 par. 1 (2) explicitly includes as offenders persons who assist another in the concealment or “obliteration” of proceeds of crime. Finally, Chapter 32 section 8 stipulates that conspiracy for the commission of aggravated ML is punishable by a fine or imprisonment for at most one year. This provision, which is highly unusual in Finnish criminal law and results from EU instruments, concerns instances in which the proceeds are derived from bribery, aggravated EU tax fraud or aggravated subsidy fraud related to taxation. Conspiracy is not punishable in relation to the simple ML offence, neither in relation to the receiving offence. However, there is no such obligation stemming from the Convention. Finnish criminal law uses the concept of conspiracy very sparingly – the concept of participation is preferred.

- As to attempt, section 1 par. 1 of Chapter 5 provides that an attempt of an offence is punishable only if the attempt has been denoted as punishable in a provision on an intentional offence. Accordingly, attempt is punishable for the offences of simple ML (section 6 par. 2 of Chapter 32) and aggravated ML (section 7 par. 2 of Chapter 32), though not for negligent ML or petty ML violations.

- Article 23 par. 2 (a) and (b) of the Convention require that the list of predicate offences include the widest possible range and at a minimum the offences established in accordance with the Convention. Finnish law does not restrict the application of the ML offence to specified predicate offences or categories of such offences. It seems therefore that in Finland any offence can be a predicate offence to ML, including offences committed abroad.

ii) Despite the above, two important issues remain to be addressed:

- Subject to the basic concepts of the legal system of the State party in question, Article 23 par. 1 (b) (i) of the Convention contains as a mandatory offence: the acquisition, possession or use of proceeds of crime, knowing, at the time of receipt, that such property is the proceeds of crime. The Finnish ML offence (Chapter 32 section 6 par. 1 of the Criminal Code) does not cover the mere possession of proceeds of crime nor does it cover acquisition or use of such property in situations where the perpetrator does not intend to conceal or obliterate the illegal origin of the proceeds of crime. The receiving offence (Chapter 32 section 1 of the Criminal Code) covers in part possession, acquisition and use (“handling”), but only with respect to “theft, embezzlement, robbery, extortion, fraud, usury or means of payment fraud”. Thus, and despite the requirement of Article 23 par. 2 (a) (b) of the Convention to include the widest range possible of predicate offences, the possession of proceeds of crime and the acquisition or use of such property is not criminalized in all cases. It should also be noted that attempt of the receiving offence does not seem to be punishable, although required by Article 23 par. 1 (b) (ii) of the Convention.
- Article 23 par. 2 (e) allows a State to provide that the offence set forth in the Article shall not apply to the persons who committed the predicate offence, if

required by fundamental principles of the domestic law. According to the restrictive provision of section 11 of Chapter 32 of the Finnish Criminal Code, it is not possible to prosecute persons for laundering the proceeds of his/her own criminal activity (“self-laundering”). It is not yet clear if this is due to any fundamental principle of Finnish law. The Finnish Ministry of Justice reported that this is indeed the case, stressing that the criminalization of self-laundering seems to run against common sense. The Finnish Financial Intelligence Unit is of a different opinion and considers the lack of criminalization as a loophole in the national AML legislation which allows a serious form of illicit behaviour to go unpunished. The National Bureau of Investigation also strongly supports the criminalization of self-laundering.

It should be noted that the Finnish authorities are aware of the above shortcomings and have taken steps to address them. The Government has tabled a proposal (185/2010) which includes a provision on the inclusion of possession of the proceeds of crime within the scope of the criminalisation provisions. The Parliament has recently approved this amendment, which should enter into force during the summer of 2011. Furthermore, a working group has been established to look into criminalizing self-laundering and whether this would be compatible with fundamental issues of Finnish law. The discussion in Finland is thus ongoing.

#### **Article 24. Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has suggested that the conduct involved is already covered by Chapter 32, sections 6 through 10 of the Criminal Code, cited above.

##### **(b) Observations on the implementation of the article**

Concealment appears indeed to be fully covered by the Chapter 32, sections 6-10 of the Criminal Code. This does not seem to be the case with the “continued retention” of property resulting from an offence established in accordance with the Convention. As pointed out in the previous section, the Finnish ML offences do not cover the mere possession (to which the “continued retention” seems very near) of proceeds of crime. However, as noted above, the criminalization of the conduct in question has been considered and an amendment is already underway (185/2010) to include possession offences. In view of the above, and considering the non-binding nature of article 24 of the Convention, Finland can be regarded as having fulfilled its obligations.

#### **Article 25. Obstruction of justice**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or*

*the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention.*

*Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided the text of Chapter 15, sections 5 and 9 and Chapter 16, sections 1 through 3 of the Criminal Code, as well as clarifications regarding the interpretation of these provisions.

Under Article 25 (a) States must criminalize acts directed towards influencing potential witnesses and others in a position to provide the authorities with relevant evidence, in proceedings in relation to the commission of offences established in accordance with the Convention. The obligation is to criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use of physical force, threats or intimidation. The use of corrupt means is covered by Chapter 15 section 5 entitled “Attempted incitement to a false statement”. In the event that the incitement succeeds, then the inciter would most likely be punished under Chapter 5 section 5 of the Criminal Code as an instigator to the false statement committed by the witness (Chapter 15 sections 1-3). The use of physical force, threats or intimidation to interfere with witnesses, including officials giving testimony, is criminalized by Chapter 15 section 9 of the Criminal Code, entitled “Threatening a person to be heard in the administration of justice”. No aggravated provisions apply when the witnesses are justice or law enforcement officials. However, the establishment of particular criminal offences in this respect is not required by the Convention, and in any case such behaviour (threats against justice or law enforcement officials) might also fall under chapter 16, section 1 referred to below (violent resistance to a public official), thus in effect forming a more heavily punished (aggravated) form of conduct.

Under Article 25 (b) States must criminalize interference with the actions of judicial or law enforcement officials, namely the use of physical force, threats or intimidation to interfere with the exercise of their official duties in relation to the commission of offences established in accordance with the Convention. This behaviour is covered by Chapter 16 sections 1-3 of the Criminal Code which refer to violent resistance to a public official (sections 1-2) and obstruction of a public official (section 3).

As explained in the section referring to bribery offences in the public sector, actions committed intentionally are fully covered according to the General Part of the Criminal Code.

### **(b) Observations on the implementation of the article**

As is the case with other offences, and bearing in mind Article 30 par. 1 of the Convention, there was initially some doubt in respect of the effectiveness and proportionality of the penalties provided for (a fine for obstruction of a public official, a fine or imprisonment for at most one year for attempted incitement to a false statement, a fine or imprisonment for at most three years for threatening a person to be heard in the administration of justice, and a fine or imprisonment for at most four years for violent

resistance to a public official), which doubt was however removed in view of the overall level of punishment used by the Finnish criminal justice system.

In view of the above, the provisions of the Finnish Criminal Code appear mostly to criminalize obstruction of justice in accordance with article 25 of the Convention. Only the following point still needs to be addressed:

- Neither section 5 nor section 9 of Chapter 15 of the Criminal Code seem to explicitly include cases where the use of corrupt means, violence or threats is meant to interfere not with the testimony of witnesses but with the production of non-oral evidence (such as a document) by persons involved in criminal proceedings. Such conduct might only fall under the general illegal threat offence of Chapter 25 section 7 of the Criminal Code (illegal threat) which carries, however, a lower sanction, creating a discrepancy regarding the applicable penalties in similar situations.

### **Article 26. Liability of legal persons**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided the text of Chapter 9, Chapter 16, section 18, Chapter 17, section 24, Chapter 32, section 14 of the Criminal Code. It has also provided clarifications on a number of interpretation issues, as well as information on administration law and procedure. More specifically:

- Article 26 par. 1 of the Convention requires States parties to take the necessary steps, consistent with their fundamental principles, to provide for corporate liability for the offences established in accordance with the Convention. This liability may be criminal, civil or administrative (Article 26 par. 2). Although there is no obligation to establish criminal liability, Finland has taken this step. The underlying provision in relation to corporate criminal liability can be found in Chapter 9 section 1 par. 1 of the Criminal Code, which notes that:

*“A corporation, foundation or other legal entity in whose operations an offence has been committed may on the request of the public prosecutor be sentenced to a corporate fine if such a sanction has been provided in this Code.”*

According to Chapter 9 section 2 par. 1, corporate liability arises

*“where a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence has not been observed in the operations of the corporation.”*

The offence is deemed to have been committed in the operations of a corporation if the offender has acted on behalf or for the benefit of the corporation, and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation (section 3 par. 1).

- Under section 18 of Chapter 16, section 24 of Chapter 17 and section 14 of Chapter 32, corporate criminal liability is indeed available for the offences of simple and aggravated active bribery of public officials and members of Parliament (domestic and foreign), of participation in the activity of a criminal organization, of the receiving, aggravated receiving and professional receiving offences and of ML and aggravated ML. Thus a corporation, foundation or legal entity, in the operation of which, for example, a ML offence has been committed, shall be sentenced to a corporate fine on the request of the public prosecutor. Corporate criminal liability is also available for the offences of bribery in the private sector, according to Chapter 30 section 13 of the Criminal Code.

- In the respect of article 26 par. 3, the State under review points out that “each and every of the basic criminal law provisions apply to the natural person who committed the offence”. The liability of natural persons who perpetrated the acts is, indeed, by no way affected by the provisions on corporate liability. As to whether or not a legal person can be found liable independently of the natural persons involved, the Finnish law provides for a positive answer. According to section 2 par. 2 of Chapter 9 of the Criminal Code, fines can be imposed on corporations even in cases where the individual offender cannot be identified or is otherwise not punished. Equally, the punishment of the offender does not automatically exclude a sanction for the corporation.

- In terms of the frequency with which Finnish prosecutors have demanded that a legal person be declared criminally responsible for the commission of economic crimes, it was reported that this is a rare occurrence (it was not requested on more than 2 or 3 occasions) Mostly, declarations of corporate liability have concerned environmental offences.

#### **(b) Observations on the implementation of the article**

In view of the above, the Finnish Criminal Code mostly regulates the liability of legal persons in accordance with article 26 of the Convention. However, the following points still need to be addressed:

- The offences of passive bribery of public officials, embezzlement in the public and private sector, abuse of functions, and obstruction of justice are not among those where criminal liability of legal persons has been established. According to the State under review, these offences were not deemed to necessitate the use of corporate criminal liability, since corporate criminal liability in Finland (as noted in the Government proposal to Parliament 95/1995) is used in general only for certain more serious offences and involves a rather cumbersome process for imposing corporate fines. Nevertheless, the existence of a problem with respect to the obligations stemming from the Convention was acknowledged.

The above shortcoming is alleviated by the fact that there are some further administrative remedies concerning the liability of legal persons for the offences established according to the Convention. One administrative sanction exists under the Business Prohibition Act: A person may be prohibited from engaging in commercial activities for periods between three and seven years if he or she: (i) has neglected to meet his/her statutory obligations in business; or (ii) has committed a criminal act in business of a type that cannot be deemed minor and, when assessed as a whole, where the conduct is harmful to creditors, contract

partners, public finance or healthy and functional economic competition. A second administrative sanction is a punitive tax increase, which can be imposed on a person (or company) which provides false information in a tax return. Since bribes are not tax-deductible, failure to disclose the payment of a bribe may lead to such a punitive tax increase.

- Article 26 par. 4 of the Convention requires States parties to ensure that legal persons held liable are subject to effective, proportionate and dissuasive sanctions, including monetary sanctions. According to section 5 of Chapter 9 of the Finnish Criminal Code, a corporate fine can reach at most 850 000 Euros. It was accepted by representatives of both the Ministry of Justice and the Public Prosecutor's Office that the maximum fine for corporations could be higher taking in account the seriousness of the offences, the often significant profits involved and the economic strength of the entities in question. The current fine has been described as "definitely too low" and "rather a symbolic one". The argument that this low limit for pecuniary penalties may not meet the required standard is reinforced by the impossibility of imposing other, non-monetary sanctions under criminal law, such as exclusion from contracting with the Government, debarment, withdrawal of certain advantages, or closing down of legal entities.

#### **Article 27. Participation and attempt**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided the text of Chapter 5 of the Criminal Code.

#### **(b) Observations on the implementation of the article**

Based on the information provided, the following conclusions can be reached:

- Sections 3 to 6 of Chapter 5 of the Criminal Code comply with Article 27 par. 1 of the Convention regarding participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with the Convention.
- Sections 1-2 of Chapter 5 of the Criminal Code comply with the optional requirement of Article 27 par. 2 of the Convention regarding attempt to commit an offence established in accordance with the Convention.
- With regard to the optional requirement of Article 27 par. 3, Finland has not followed it and has not criminalized the "preparation" for offences established in accordance with the Convention. The explanation given by the State under review, that "the criminalization of preparation does not fit in easily with the Finnish legal system and its basic principles, which require clear identification of the reproachable conduct that constitutes the offence", is deemed satisfactory.

In view of the above, Chapter 5 of the Finnish Criminal Code regulates participation and attempt in full compliance with article 27 of the Convention.

**Article 28. Knowledge, intent and purpose as elements of an offence**

*Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has made a simple statement, that the above provision “is part of the principles of criminal law, and is not based on any specific provision.”

**(b) Observations on the implementation of the article**

The meaning of the provision is that the evidentiary provisions of the domestic legislation should enable the inference described above with respect to the mental state of the offender, rather than requiring direct evidence, such as a confession, before the mental state is deemed proven. The statement of the State under review is deemed satisfactory.

**Article 29. Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided the text of Chapter 8, sections 1 through 5 of the Criminal Code, as well as clarifications regarding the interpretation of these provisions.

Article 29 of the Convention requires that State parties establish, where appropriate, a long statute of limitations period in which to commence proceedings for any offence established in accordance with the Convention. According to Chapter 8 section 1 par. 2 of the Criminal Code, “the right to bring charges is time-barred if charges have not been brought (1) within twenty years, if the most severe penalty provided for the offence is fixed-term imprisonment for over eight years, (2) within ten years, if the most severe penalty is imprisonment for more than two years and at most eight years, (3) within five years, if the most severe penalty is imprisonment for over a year and at most two years, and (4) within two years, if the most severe penalty is imprisonment for at most a year, or a fine.” Furthermore, according to Chapter 8 section 1 par. 4, “The minimum period during which the right to bring charges for offences in office becomes time-barred, however, is five years.”

Article 29 of the Convention requires additionally that State parties establish, where appropriate, a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice. According to Chapter 8 section 4 of the Criminal Code, “on application, the period of limitation on the right to bring charges may be extended once by one year, if (...), (3) the person to be summoned as defendant in the offence is evading apprehension and for this reason he or she probably cannot be given notice of the summons before the end of the period of limitation and a very important public interest demands continuation of the



period of limitation.” Finland’s Criminal Code does not provide for the possibility of suspension of the statute of limitations.

### **(b) Observations on the implementation of the article**

Based on the information provided, the following observations can be made:

- The time limits provided for in the Finnish Criminal Code could conceivably create problems in the prosecution of some offences that are complex and especially difficult to detect and where legal assistance is needed. However, all in all, they seem to strike a fair balance between the interests of swift justice, closure and fairness to victims and defendants and the recognition that corruption offences often take a long time to be discovered and established.

- There was some concern that a sole one-year extension possibility is too restrictive and could prove an obstacle to the effective prosecution of some the offences established in accordance with the Convention. However, the State under review (in particular the representatives from the Public Prosecutor’s Office) have explained to the satisfaction of the review team that, although the a longer statute of limitations would conceivably help avoiding that a few offenders evade justice by concealing the offence, up until now there have been no particular practical problems or implications with the existing provision. A further extension is thus not considered as necessary or appropriate. It was also noted that a somewhat similar discussion with much the same conclusion was held in connection with the Phase 3 review of Finland by OECD in October 2010.

In view of the above, one can reach the conclusion, that Chapter 8 of the Finnish Criminal Code regulates the statute of limitations in a manner that is in accordance with article 29 of the Convention.

### **Article 30. Prosecution, adjudication and sanctions**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed,*



*suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

*9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.*

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided information on the principle of mandatory prosecution in the Finnish criminal system, on the existing possibilities of waiving prosecution (including extracts from the Public Prosecutor's Guidelines on Preparation and Content of a Decision on Non-Prosecution) and on parliamentary immunity (including the text of Section 30 of the Constitution). It has also provided information on the possibility of detention pending trial, including a link to the text of the Coercive Means Act, on the possibility of release on parole, including the text of Chapter 2c, section 5 of the Criminal Code, and on the punishment of public officials, including the text of Chapter 6 section 1 (3) of the Criminal Code and of Chapter 9, section 40 (2)(1) of the Public Officials Act. Finally, the State under review has provided information on the dismissal and suspension of officials (including the text of section 28(3) of the Constitution on the suspension of parliamentarians), on the suspension of persons from engaging in business and on issuing warnings and admonitions against public officials who violate their office, as well as information on the interpretation of the above mentioned provisions.

- Some initial reservations regarding the implementation of **article 30 par. 1**, which have been expressed in previous observations on individual articles, were removed following the discussions with the representatives of the country under review, also taking into account **par. 9 of Article 30**, which affirms the primacy of national law in respect of the determination of the severity of the punishment.

- According to **par. 8 of Article 30**, the establishment of proportionate sanctions shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants. This seems to be the case in Finland.

- The State under review has declared that "public officials do not have any such immunities" as described in **article 30 par. 2**.

Members of the Finnish Parliament are not considered public officials. Pursuant to Section 30 of the Constitution, Members of the Finnish Parliament are accorded immunity for opinions expressed in Parliament or owing to conduct in the consideration of a matter, unless the Parliament has consented to the raising of

criminal charges by a decision supported by at least five sixths of the votes cast. The consent of Parliament is also needed for the arrest or detention of a Representative, unless he or she is “for substantial reasons” suspected of having committed a crime for which the minimum punishment is imprisonment for at least six months. Interestingly, at the moment of the review it was being discussed before a parliamentary committee if a MP should be indicted for corruption. In any case, the above provision on immunity seems balanced and has not been the cause of any practical problems which might impair the application of the offences established in accordance with the Convention.

- As for **article 30 par. 3**, the State under review has explained that its criminal justice system is based on the principle of mandatory prosecution. Although the public prosecutor has some discretionary power to waive prosecution, this concerns only cases where the conduct was petty (Chapter 1, section 7 (1) of the Criminal Procedure Act), or where it would be unreasonable to charge the offender with an offence (Chapter 1, section 8 (1) of the Criminal Procedure Act). The Public Prosecutor’s Guidelines on Preparation and Content of a Decision on Non-Prosecution specify that these grounds refer to offences with little significance that carry no penalty more severe than a fine, or to cases where other reasons or circumstances, with limited application to the offences of the Convention (such as actions of the offender to prevent or remove the effects of the offence, the personal circumstances of the offender, the other consequences of the offence to the offender, etc.) call for waiver and there is no important public or private interest that requires otherwise. As the State under review notes, it is highly doubtful that, given the seriousness of allegations of corruption and the important public interests involved, measures in such a case would be waived.

A similar situation exists regarding the possibility of waiver of the criminal liability of legal persons, given that Chapter 9, section 7 (1) of the Criminal Code provides for this possibility only if the act in question was “of minor significance”, or if “only minor damage or danger has been caused” and “the corporation has voluntarily taken the necessary measures to prevent new offences”. In view of these considerations, Finland should be deemed to be in compliance with the provision under review.

- According to an interpretative note, the expression “pending trial”, as cited in **article 30 par. 4**, is considered to include the investigation phase (A/58/422/Add.1, para. 35). In effect, States parties are required to take appropriate measures to ensure that the defendants do not abscond.

The State under review has pointed out that according to Chapter 1, section 3 of the Coercive Means Act, a person may be arrested if he or she is suspected with probable cause of having committed an offence for which the punishment is at least one year and in addition it is probable, among others, that the suspect shall seek to escape or evade justice, especially if he or she is not domiciled in Finland. If the minimum sentence is imprisonment for two years, the suspect may be arrested even if the above conditions are not fulfilled. Furthermore, according to Chapter 1, section 8 of the Coercive Means Act, a person may be remanded for trial on the same grounds described above. In view of these considerations, Finland should be deemed to be in compliance with the provision in question.

- **Article 30 par. 5** requires States parties to take into account the gravity of the offences concerned considering the eventuality of early release or parole of persons convicted of offences established in accordance with the Convention. As pointed out by the State party, according to Chapter 2c section 5 of the Criminal Code release on parole is

relatively automatic for offenders after they have served a specific part of their sentence. First-time prisoners are usually released after having served one-half of the sentence, and recidivist prisoners after having served two-thirds of the sentence. Although no differentiation is made regarding the offences established in accordance with the Convention the minimum eligibility period is considered high enough and should be deemed to take sufficiently into account the gravity of the offences concerned.

- As for **article 30 par. 6**, the State under review notes that Chapter 9, section 40(2)(1) of the Public Officials Act provides that a public official who is suspected of an offence may be suspended from office for the duration of prosecution or of the necessary investigations if these can be deemed to influence his or her ability to perform his or her duties. Finland is thus in compliance with the provision in question.

- As for its compliance with **article 30 par. 7**, Finnish law provides in most cases for dismissal and suspension from the office in which an offence was committed. The State under review has explained that dismissal or suspension from office would be recorded in the personal file of the public official in question, and thus would be known to an official or authority who is considering possible appointment of this person to a new public office. As already pointed out during the analysis of previous Articles of the Convention, Chapter 40 sections 1 (3), 2, 7 (2), 8 and 9 (2) of the Criminal Code provide for the possibility of dismissal from office in cases of simple and aggravated passive bribery of ~~national~~ public officials, simple and aggravated abuse of public office, and violation of official duty. According to Chapter 2 section 7 (1) of the Criminal Code, “dismissal referred to in the penal provisions in chapter 40 of this Code comprises the forfeiture of the public office or function in which the offence was committed. If the public official has transferred from the office in which the offence was committed to another corresponding office, the dismissal comprises the forfeiture of that office.”

Furthermore, according to the general provision of Chapter 2 section 10 of the Criminal Code, a public official, a person elected to a public office or a person who exercises public authority shall be dismissed from office

*“if he or she is sentenced to imprisonment for a fixed period that is at least two years, unless the court deems that the offence does not demonstrate that the sentenced person is unsuitable to serve as a public official or to attend to a public function.”*

Equally, if a person referred to above is sentenced for an intentional offence to imprisonment for a period that is less than two years,

*“he or she may at the same time be dismissed from office if the offence demonstrates that he or she is apparently unsuitable to serve as a public official or to attend to the public function.”*

Chapter 2 section 7 (2) of the Criminal Code specifies that in the above cases the dismissal comprises the forfeiture of the public office, function or the public offices and functions that the convicted person has at the time when the sentence is passed. In view of these considerations, Finland should be deemed to be in compliance with the provision in question, at least regarding persons holding public office.

Regarding members of municipal councils or other equivalent bodies, Chapter 2 section 10 (3) of the Criminal Code says that

*“a member of the representative body of a public electoral body who has been elected in a general election shall not be dismissed from said office by virtue of this section.”*

However this provisions does not exclude the dismissal of the above persons in all cases. Should a member of a municipal council be convicted of an act in office criminalized in Chapter 40 of the Criminal Code, for which the punishment may include dismissal from office, the court may in such cases deprive him or her of his or her mandate.

Regarding members of Parliament, Finnish law does not provide for the automatic forfeiture of the parliamentary seats of MPs or indeed any elected officials convicted for offences under the Convention. Such forfeiture is also not possible by court decision. A Member of Parliament has a mandate given by the electorate and it is considered a matter for the electorate to take a new decision by voting in connection with the following elections. There is however a procedure leading potentially to the dismissal of members of Parliament: Section 28(3) of the Constitution provides for the dismissal of a Representative by Parliament in the event that he or she has been sentenced to imprisonment for a deliberate crime and the offence is such that the accused does not command the trust and respect necessary for his or her office. Based on this provision, and despite some inconsistencies with the harsher treatment of “normal” public officials of which we have made mention earlier (e.g. regarding Article 15 of the Convention), the conclusion can be reached that the State under review has fulfilled its obligations from par. 7 of Article 30.

- Finally, **Article 30 par. 10** recognizes that, just as with persons found guilty and punished for other kinds of misconduct, reintegration into the society is an important goal of control systems. Consequently, States parties must endeavour to promote the reintegration into society of persons convicted of offences established in accordance with the Convention. Finland states that reintegration of offenders is a fundamental principle of criminal policy in Finland.

#### **(b) Observations on the implementation of the article**

In view of the above, Finland appears to mostly regulate prosecution, adjudication and sanctions in accordance with article 30 of the Convention. Only the following point still needs to be addressed:

- Regarding the dismissal of persons holding office in an enterprise owned in whole or in part by the State, Finland has stated that the Business Prohibition Act (1059/1985) provides that a person convicted of offences connected with commercial activities may be prohibited from engaging directly or indirectly in business for at least three, and at most seven years. At the same time, however, it was made clear that persons holding office in private enterprises (which may well be owned in whole or in part by the State), including private contract employees of public electoral bodies may not be dismissed on the basis of a conviction of an offence. It is suggested that the establishment of a procedure for the disqualification of such persons, when convicted of offences established in accordance with the Convention, might be considered.

#### **Article 31. Freezing, seizure and confiscation**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

*10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided the text of Chapter 10 of the Criminal Code, information on other laws (especially the Money Laundering Act and the Coercive Measures Act) as well as clarifications on the interpretation of the relevant provisions and some statistical data.

- **Article 31 par. 1** of the Convention requires States parties to adopt measures, to the greatest extent possible within their legal system, to enable the confiscation of proceeds or equivalent value of proceeds and of instrumentalities of offences established according to the Convention. According to Article 2 (g), “confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority.

Confiscation in Finland, as regulated, in a solid and methodical way, in Chapter 10 of the Criminal Code, may be ordered in relation to the proceeds (or an estimate of the proceeds – Chapter 10 par. 2 (2)) and instrumentalities of the offence, or with regard to certain other property, such as an object being produced during the course of an offence. Any criminal offence, including the ones established in accordance with the

Convention, allows for a decision on confiscation of proceeds of crime, even in cases where the offender is not convicted as a result of lack of criminal capacity or is exempt from criminal liability. The possibility of confiscation applies also to legal persons. According to Chapter 10 (1) (3) of the Criminal Code a corporation may be subject to a forfeiture order, even if the individual committing the offence cannot be identified or for some other reason cannot be convicted (*in rem* confiscation).

Confiscation of proceeds of crime is mandatory and may be carried out against the offender, a participant in the crime or a person on whose behalf or to whose advantage the offence was committed, provided that this person has benefited from the offence. The State under review does not mention Chapter 40 section 14 of the Criminal Code that deals especially with the forfeiture of a bribe and should also be taken into account. According to this provision, a gift or benefit that is received or the value thereof shall be declared forfeited to the State from the offender or from the person on whose behalf or in whose favour the offender has acted. The provision applies to public officials or members of Parliament who are convicted of passive bribery. The provisions of Chapter 10 apply to the forfeiture of other property.

If there is no evidence as to the amount of the proceeds of crime or if such evidence is difficult to present, the proceeds shall be estimated by the court. In such a case the nature of the offence, the extent of the criminal activity and other relevant circumstances shall be taken into account. Confiscation is not possible concerning the value of the proceeds that has been returned to the injured party or if claims for compensation or restitution have been filed (Chapter 10 section 2 (3)).

The Finnish legislation provides for extended confiscation of the proceeds of crime (Chapter 10 section 3), that is for a full or partial confiscation of property against a person guilty of an offence (or an attempt thereof), which carries a possible penalty of imprisonment of at least four years. Such confiscation is possible only if the offence may result in considerable financial proceeds and if there is a reason to believe that the property fully or partially derives from criminal activity that is not considered insignificant. Moreover, such confiscation may also be ordered on close relatives of the offender or a legal person linked to the offender, if there is reason to believe that the property has been conveyed to that person to avoid confiscation or liability.

Confiscation of an instrument of a crime which has been used in a crime or produced, manufactured or brought about by way of an offence is mandatory with regard to objects or property the possession of which is illegal (Chapter 10, Section 4 par. 1, Section 5 par. 1). Confiscation of certain other property, for example property which has been used in the commission of an intentional offence or has produced, manufactured or brought about by way of an offence, may also be ordered (Chapter 10, Section 4 par. 2, Section 5 par. 2). Both these types of confiscation may also be carried out for the purpose of prevention.

Value confiscation is also possible in relation to an instrument of a crime or the property produced during a crime (Chapter 10 Section 8). If such an instrument or the property has been hidden or is otherwise inaccessible, a full or partial confiscation of the value may be ordered on the offender, a participant or a person on whose behalf or with whose consent the offence has been committed. In addition, value confiscation may also be ordered on a person to whom an instrument or the property has been conveyed. However, value confiscation is not allowed if it is shown that the instrument or property has probably been destroyed or is consumed.

In view of the above, Finland should be deemed to be in compliance with the provision in question.

- **Article 31 par. 2** of the Convention obligates States parties to enable as a pre-trial measure the identification, tracing, freezing and seizing of items for the purpose of confiscation and recovery. According to Finnish law, the Finnish FIU may request that assets be frozen for a maximum of five days, on the basis of the Money Laundering Act. If there are grounds to suspect that an offence has been committed, and a pre-trial investigation requires that the assets be kept frozen beyond this five-day period, then the Coercive Measures Act (Law 450/1987 – CMA) becomes applicable and a prolongation of the freezing measure can in effect be ordered. More specifically, under the CMA, the FIU investigator (or other investigator) himself or herself has the immediate possibility to freeze the assets as a so-called “precautionary measure” for up to seven days. This period is sufficient for the investigator to turn to the court in order to request a court order for the renewed freezing of the assets, in accordance with section 2 of the CMA. This court order may be in place for up to four months, with the possibility of further court orders of up to the same period each.

Therefore, in cases of money laundering, the total period during which assets may be frozen would be five days (on the basis of the ML Act) + seven days (on the basis of the CMA) + four months (+ four month extensions, as needed, all on the basis of the CMA). In case of other offences the CMA is used from the beginning allowing an investigator freeze the assets for seven days and then the court for four months etc. Both the seven-day period and the four-month period are subject to appeal; the person in question may turn to the court and request that the freeze order be lifted.

From a practical point of view, there have been only a relatively low number of the cases which fall under the Convention. Seizure of assets as security has not been ordered in any such cases, nor have there been any other coercive measures directed against the assets of suspected persons or corporate bodies. In the very few cases where coercive measures have been used in Finland in respect of UNCAC offences, seizures have primarily been directed at documents, electronic messages and the data contents of computers. There have been cases of money laundering, however, where freezing has been ordered (22 times in 2010 with 2,8 million Euros having been recovered). In average freezing measures of this nature are being ordered 15 times per year.

- **Paragraphs 4 and 5 of Article 31** cover situations in which the source of proceeds or instrumentalities may not be immediately apparent, because the offenders have made their detection more difficult by mingling them with legitimate proceeds or by converting them into different forms. These paragraphs require States parties to enable the confiscation of property into which such proceeds have been converted, as well as intermingled proceeds of crime up to their assessed value. **Paragraph 6 of Article 31** further provides that income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in the article, in the same manner and to the same extent as proceeds of crime.

The State under review states that if property is transformed into or intermingles with other property, its forfeiture and confiscation would be possible according to Chapter 10 section 2 of the Criminal Code, while there is also the possibility of forfeiture and confiscation of value, based on section 8 of the same Chapter. Finland further states

that income or other benefits derived from such property are also covered by section 2. These possibilities have been confirmed.

- **Article 31 paragraph 7**, sets forth procedural law requirements to facilitate the operation of the other provisions of Article 31 and of Article 55 (International cooperation for purposes of confiscation). It requires States parties to ensure that bank records, financial records (such as those of other financial services companies) and commercial records (such as of real estate transactions, shipping lines, freight forwarders and insurers) are subject to compulsory production, for example through production orders and search and seizure or similar means that ensure their availability to law enforcement officials for purposes of carrying out the measures called for in Articles 31 and 55. The same paragraph establishes the principle that bank secrecy cannot be raised by States as grounds for not implementing that paragraph.

According to the Section 36 (Obtaining information from a private organisation or person) of the Police Act, (493/1995),

*“At the request of a commanding police officer, the police have the right to obtain any information necessary to prevent or investigate an offence, notwithstanding business, banking or insurance secrecy binding members, auditors, managing directors, board members or employees of an organisation [...]”*

In particular, the lifting of bank secrecy does not require court authorisation.

- **Article 31 par. 8** suggests that States parties may wish to consider shifting the burden of proof to the defendant to show that alleged proceeds of crime were actually from legitimate sources. Because States may have constitutional or other constraints on such shifting of the burden of proof, States parties are only required to consider implementing this measure to the extent that it is consistent with the fundamental principles of their law.

Finland’s criminal justice system takes a highly restrictive view towards any reversal of the burden of proof in criminal cases, and does not allow for the prosecutor to claim that certain assets in the possession of the suspect are the proceeds of crime in a way that shifts the burden of proof to the suspect. On the other hand there is no issue of non-implementation of the Convention requirements, given the optional character of the measure, and also the fact that, as it seems, in some cases the level of the proof required for the court to impose confiscation is lower than what is the case for convicting an offender. For example, extended confiscation (Chapter 10 Section 3 of the Criminal Code) may be ordered if there is “reason to believe” that the property derives from criminal activity.

- **Article 31 par. 9** requires that the seizure and forfeiture requirements be interpreted as not prejudicing the rights of bona fide third parties, which would at a minimum exclude those with no knowledge of the offence or connection with the offender(s). This is in accordance with Chapter 10 Section 6 of the Finnish Criminal Code, which stipulates that if an instrument of a crime or other property belongs to a third party, it may only be confiscated if it has been conveyed to him/her after the commission of the offence and if he/she knew or had justifiable reason to believe that the object or property was linked to an offence or, if he/she has received it as a gift or otherwise free of charge.

#### **(b) Observations on the implementation of the article**

In view of the above, Finland appears to regulate freezing, seizure and confiscation mostly in accordance with article 31 of the Convention. However, the following point still need to be addressed:



- Article 31 par. 3 of the Convention introduces an obligation for States parties to regulate the administration of frozen, seized or confiscated property. The State under review states that “according to Chapter 4, section 10 of the CMA, seized or confiscated property is to be maintained as it is. It may not be misused. If the property is very perishable or its value may depreciate very rapidly, it may be sold.” It is suggested that asset management could be more methodically regulated, so as to allow for a cost-effective administration of frozen property, not limited in cases where the property is perishable and its value may rapidly depreciate.

### **Article 32. Protection of witnesses, experts and victims**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided information on a large number of separate statutes containing provisions that are designed to provide protection to witnesses and victims.

- The requirements of **Article 32 par. 1** are mandatory, but only where appropriate, necessary, without prejudice to the rights of defendants and within the means of the State party concerned.

Finland does not have a witness relocation program. It has opted instead to place particular emphasis on the non-disclosure of information concerning the identity and the whereabouts of witnesses or other person to be heard in the pre-trial investigation and in court (including victims, as required by **par. 4 of the Article**). Accordingly: Contact information regarding a witness or other person being heard in the pre-trial investigation need not be given to the suspect (Openness of Government Activities Act, section 11, subsection 1(7) and section 24, subsection 1(31)). Correspondingly, contact information regarding a witness or other person to be heard need not be given to the defendant. (Criminal Procedure Act, chapter 5, sections 3 and 9). The name of a witness or other person being heard may be kept secret in a trial document or the judgment itself (Publicity of Court Proceedings Act, section 9, subsection 1(5) and

section 24, subsection 1(1). A police officer need not reveal information regarding a person's identity that was given to him or her in confidence (Police Act, section 44). And, finally, the local population registration authority may refuse to provide information, to other than another authority, regarding the domicile of a person who has justified reason to suspect that his or her safety, or the safety of his or her family, is in danger (Population Registration Act, section 25, subsection 4).

Finland has also taken measures to ensure the safety of witnesses while giving testimony. Accordingly: According to section 20 of the Publicity of Court Proceedings Act, a witness or other person may, for his or her protection, be heard in a session that is closed to the public. Furthermore, according to chapter 17, section 34 of the Procedural Code, a witness or other person may, for his or her protection, be heard without the presence of a party or of another specific person or (section 34a) by video-link.

- With regard to the right of victims to present and have their views and concerns considered at appropriate stages of criminal proceedings against offenders (**Article 32 par. 5**), Finland states that “the victim of an offence is a full party to the criminal proceedings, and thus has the right, for example, to ask questions, suggest evidence, summon witnesses and also appeal the decision.”

#### **(b) Observations on the implementation of the article**

In evaluating the implementation of this Article, it is taken into account that Finland is a relatively small and homogenous country, with an extensive degree of transparency and high technology. It would be very difficult to successfully relocate a person from one part of the country to another, and continue to maintain his or her new identity. Also, from a practical point of view a pressing need for a relocation programme there has not yet arisen – albeit there have been discussions about their introduction, as well as a program to identify good practices in the EU. In view of the above, and given the wide discretionary powers accorded to the States parties regarding the implementation of the present Article, Finland should be deemed to be in compliance with its requirements. All the same, given the fact that even the existing measures to protect the identity of informants are not always successful – it is acknowledged that names of witnesses can be found – the State under review is encouraged to continue looking into the matter.

#### **Article 33. Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided some information on the existing possibilities to protect whistle-blowers and on discussions to enhance them.

There is no specific whistleblower protection system in Finland to protect from discriminatory or disciplinary action public or private sector employees who report in good faith and on reasonable grounds suspected acts to competent authorities. Finnish authorities rely on the provisions referred to above on the protection of victims and witnesses (which apply in general to persons reporting offences) and on provisions of administrative and labour law. As the State under review states, “unjustified treatment on

the hands of the authority would be dealt with at the least as an administrative matter. Unjustified treatment by one's superiors in employment would be dealt with at least as a labour law matter.” Finland has considered, and continues to consider (e.g. in the context of its Anticorruption Network) the establishment of a more enhanced whistleblower protection system.

**(b) Observations on the implementation of the article**

In view of the above, the country under review is in compliance with Article 33 of the Convention. This having been said, and taking into account:

- a) that witness protection affords limited protection, in the context primarily of judicial proceedings,
- b) that labour laws protect in principle against dismissal and do not cover other forms of discrimination that may follow a whistleblower report, and
- c) that the offence under Chapter 30 section 5 of the Criminal Code in respect of a violation of a business secret could provide further disincentive to the reporting of offences by employees,

Finland is encouraged to continue efforts in the aforementioned direction.

**Article 34. Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided some information on the possibility to annul a contract as a consequence of corruption.

**(b) Observations on the implementation of the article**

According to the State under review, “if a contract was the result of corruption, the lack of good faith on the part of at least one of the parties is grounds for annulling the contract.” This follows from basic principles of contractual law. Given the non-mandatory nature of the present Article, Finland is in compliance with this provision.

**Article 35. Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided some information on the possibility to obtain compensation for damage as a result of an act of corruption. According to the State under review, “Chapter 2 section 1 of the Compensation Act establishes the general rule that a person who deliberately or through negligence causes damage to another is obliged to pay compensation.”

## **(b) Observations on the implementation of the article**

The issue dealt with in article 35 is one on which there does not seem to be any legal praxis in Finland. Nevertheless, Finland should be deemed to be in compliance with the present Article.

### **Article 36. Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided extensive information on the investigation and prosecution of corruption offences.

The basic investigative functions in Finland regarding offences established according to the Convention are fulfilled by the police. Finland has a national police force, with the country divided into 24 police districts. There are around 10.600 police personnel, of whom 8.000 are police officers. The police are independent and are not supervised by the Public Prosecutors in their investigations, excluding cases involving police officers. Public Prosecutors very rarely initiate an investigation. Investigation of offences is primarily the responsibility of the local police, following a “decentralised model”. According to the State under review, the larger police districts are well capable of investigating most large and complex criminal cases, including corruption-related ones, and have adequate economic crimes investigation structures on a regional level. Only some of the most serious and complex crimes, and some cases with an international connection, would generally be transferred to a special police authority, the National Bureau of Investigation, where investigators specialize in, among others, financial and economic offences. The Finnish Financial Intelligence Unit is part of the National Bureau of Investigation.

Since 2007, the National Bureau of Investigation (NBI) has operated an “anti-corruption project”. As of the beginning of 2010, anti-corruption activity has been focused in the Economic Crime Investigation Unit of the NBI; one of the functions of this unit is to detect economic offences. However, despite the wide remit of the project, during its entire existence it has been managed by only one person. The primary function of this person is to maintain and update an overview of the national situation in respect of corruption, and support the detection and investigation of corruption-related crime. The international situation in respect of corruption-related crime is also followed in the project, and the person participates in national and international cooperation with competent authorities and stakeholders. Important elements in maintaining an overview of the situation include constant monitoring of the police report system and the media, as well as meetings with foreign experts and corruption researchers.

The representatives of the State under review are in agreement, that it is not possible for one person alone to manage such an extremely wide and challenging job profile in all respects. Indeed, the fact that one person has been assigned to the National Bureau of Investigation with an anti-corruption portfolio does not seem to be sufficient to detect

related needs and challenges. It is clear, also, that from the point of view of the police, insufficient resources are invested in the detection of corruption.

The prosecutorial service is independent under the national Office of the Prosecutor-General. As with investigation, most prosecution is conducted on the local level, but cases of bribery and other forms of corruption can be transferred to be the responsibility of State Prosecutors working in the Office of the Prosecutor-General. One of the State Prosecutors specializes, among others, in corruption cases.

**(b) Observations on the implementation of the article**

In view of the above, and although Finland does have in place independent and effective mechanisms to combat corruption in accordance for the most part with Article 36 of the Convention, the need for increased manpower and resources in training and capacity-building should be addressed, with the strengthening of the competent (currently one-man) unit of the National Bureau of Investigation.

**Article 37. Cooperation with law enforcement authorities**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided information on the treatment of offenders who cooperate with the authorities.

- Under **article 37 par. 1** of the Convention, States parties are required to take appropriate measures to encourage persons who participate or who have participated in the commission of any offence established in accordance with the Convention

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on a variety of matters;

(b) To provide factual, specific help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

- Furthermore, **Article 37 pars. 2 and 3** requires States parties to consider the options of immunity and mitigation of sentences for those who cooperate under article 37.

The State under review notes that, according to Chapter 6 section 6 (3) of the Criminal Code, attempts by the perpetrator to prevent or remove the effects of the offence or his or her attempt to further the clearing up of the offence are grounds for decreasing the punishment. Finland adheres to the principle of mandatory prosecution, does not recognize the "state witness" concept and does not afford immunity from prosecution.

- **Article 37, paragraph 4**, requires that States extend the protections of article 32 (regarding witnesses, experts and victims) to persons providing substantial cooperation in the investigation or prosecution of an offence established in accordance with the Convention. In Finland the protection and safety of persons who cooperate is the same as for witnesses under article 32.

#### **(b) Observations on the implementation of the article**

In view of the above Finland should be deemed to be mostly in compliance with Article 37 of the Convention. Nevertheless, the State under review is encouraged to consider extending the privileges of persons who cooperate with the authorities in accordance with its fundamental principles (for example by providing for the non-punishment of the perpetrators of active bribery of public officials who, on their own will and before any form of examination by the law enforcement authorities announce their act to the police or the public prosecutor).

#### **Article 38. Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided information and clarifications on the way national authorities cooperate.

In Finland compliance with this Article "follows from general principles in Finnish administrative law." Although the reporting of offences to the law enforcement authorities is encouraged, there is no general obligation for public officials to report an offence to the law enforcement authorities. It could be stated that there is no general law which would require public officials to report an offence established in accordance with UNCAC (or any other convention) to the law enforcement authorities. For example, tax officials are not obliged to report a suspected corruption case to the law enforcement authorities.

There appears to be a general reluctance of public officials to report any corruption offences to the law enforcement authorities. According to the National Bureau of



Investigation, the tax officials have not reported any cases of suspected corruption to the law enforcement authorities. In order to address this, Finland is currently considering the adoption of an obligation for public officials to report corruption offences or even of a more general obligation to report any offences.

Moreover, the State under review mentioned that it has developed an internationally recognized good practice in the form of cooperation between the police, the customs and the border guards (referred to in Finnish as the PTN-network; the corresponding English term would be the PCB-network, i.e. the police, customs and border guard network). This cooperation is based on the legal powers of the three bodies to act on behalf (and in behalf) of one another, and to exchange information with one another.

#### **(b) Observations on the implementation of the article**

The State under review is encouraged to proceed with the obligation for public officials to report suspected corruption offences or even of a more general obligation to cover all offences.

#### **Article 39. Cooperation between national authorities and the private sector**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided some information and clarifications on the way national authorities and the private sector cooperate.

Regarding the encouragement of cooperation between national law enforcement authorities and the private sector, Finland has stated that “such cooperation is based on the pre-existing close cooperation between the private sector and the public authorities.” To name some concrete measures, the National Bureau of Investigation, as noted above, has assigned one of its investigators full-time with responsibility for anti-corruption activity, with a wide remit. Moreover, in 2002 the Ministry of Justice has established an Anti-Corruption Cooperation Network which brings together the key authorities, as well as other stakeholders (representing the private sector, civil society and the research community). One of the functions of the Network is to raise awareness in society of corruption. There have been efforts, for example, to encourage training and research, and discussions on various initiatives that have a bearing on the raising of awareness. The Ministry of Justice itself has promoted research on corruption, and on the international level is cooperating with the Russian Federation and China in anti-corruption activities. These have also been used in spreading awareness of corruption. The Ministry of Foreign Affairs has promoted awareness of corruption among Finnish companies operating in high-risk countries, and has otherwise sought to promote anti-corruption initiatives in international activity. Finally, the Central Chamber of Commerce has been very active in promoting good ethics in business activities, including in particular the prevention of corruption.

Regarding the encouragement of the public in general to report offences, Finland has stated that such encouragement is being given, although there is no general obligation to report offences (with the exception of certain serious offences, such as homicide or robbery, where a report could prevent the offence). Recently there have been discussions on facilitating reporting by the public of corruption offences through the internet.

**(b) Observations on the implementation of the article**

The review team acknowledges Finnish efforts to raise awareness in the private sector and suggests that these efforts are reinforced in matters that pertain to the report of suspected corruption offences, especially cooperation between private sector entities and the authorities during the investigation and prosecution of such offences.

**Article 40. Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided some information on overcoming bank secrecy in the case of domestic criminal investigations.

According to the State under review, Chapter 12 section 94(2) of the Credit Institutions Act (1607/1993) establishes the obligation of credit institutions to provide pre-trial investigation and prosecutorial authorities with information that these authorities need for the investigation of an offence.

Additionally, as already mentioned in the context of the money laundering, according to the Section 36 (Obtaining information from a private organisation or person) of the Police Act, (493/1995),

*“At the request of a commanding police officer, the police have the right to obtain any information necessary to prevent or investigate an offence, notwithstanding business, banking or insurance secrecy binding members, auditors, managing directors, board members or employees of an organisation [...]”*

In particular, the lifting of bank secrecy does not require court authorisation.

**(b) Observations on the implementation of the article**

Finland appears accordingly to be in compliance with the present Article.

**Article 41. Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided some information on initiatives to use foreign criminal records, advising that the European Union Member States are developing



instruments that would allow Member States to obtain criminal records from one another, and use these in criminal proceedings.

**(b) Observations on the implementation of the article**

Given the optional character of the present Article, Finland is in compliance with its requirements.

**Article 42. Jurisdiction**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

*(d) The offence is committed against the State Party.*

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review has provided the text of Chapter 1 of the Criminal Code, as well as of a “Decree on the application of chapter 1, section 7 of the Criminal Code (627/1996)”.

The comprehensive rules of Finnish criminal jurisdiction are laid down in Chapter 1 of the Criminal Code. These extensive rules cover, among others, acts committed within the territory of Finland (principle of territoriality, Chapter 1 section 1), acts committed on Finnish vessels or aircraft (flag principle, Chapter 1 section 2), acts committed abroad and directed at Finland and specifically at a Finnish authority (state protection principle,

Chapter 1 section 3), acts committed abroad by Finnish or other Nordic nationals and foreigners domiciled in a Nordic country as well as offences in office committed abroad by national public officials (extended active nationality principle, Chapter 1 sections 4 and 6) and acts committed abroad and directed against Finnish natural or legal persons or Finnish residents, if the act may be punished by imprisonment for more than six months (extended passive nationality principle).

According to Chapter 1 section 8, Finnish law also applies to an offence committed outside of Finland which, under Finnish law, may be punishable by imprisonment for more than six months, if the State in whose territory the offence was committed has requested that charges be brought in a Finnish court or that the offender be extradited because of the offence, but the extradition request has not been granted.

Offences are deemed to have been committed both where the criminal act was committed and where the consequence of the offence became apparent (Chapter 1 section 10). If there is no certainty as to the place of the commission of an offence, but there is justified reason to believe that the offence was committed in Finland, the offence is deemed to have been committed in Finland. Acts of participation, attempts and aiding and abetting ML which are committed abroad are covered by section 10 pars. 2 and 3 of Chapter 10.

It should be noted that, according to Chapter 1 section 11 of the Criminal Code, Finland applies the requirement of dual criminality to offences committed abroad by or against a Finn. This means that if the offence has been committed in the territory of a foreign State, Finnish law will only apply if the offence is punishable also under the law of the place of commission, and a sentence could have been passed on it by a court of that foreign State. In this case, a sanction that is more severe than what is provided by the law of the place of commission shall not be imposed in Finland. However, pursuant to Chapter 1 section 11 par. 2 (4) and (8), this general principle of dual criminality is not applicable in respect of active and passive bribery of domestic and foreign public officials and members of Parliament

According to Article 42 par. 5, States are required to consult with other interested States in appropriate circumstances in order to avoid, as much as possible, the risk of improper overlapping of exercised jurisdictions. Finland does not seem to have specific provisions on procedures to allow consultations in cases where several States have jurisdiction in an alleged offence. It has indicated that compliance with the above requirement follows from established principles of mutual legal assistance. The procedures have been described as flexible and easygoing. Traditionally, there is an especially good cooperation with other Nordic countries.

#### **(b) Observations on the implementation of the article**

In view of the above Finland appears to regulate jurisdictional matters in accordance with article 42 of the Convention.

## **Chapter IV. International Cooperation**

### **Article 44. Extradition**

#### ***Paragraph 1***

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the*

*territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

By virtue of Act of Parliament no.466/2006, through which UNCAC has acquired the force of law in the Finnish legal system, Finland ensures compliance with this provision.

**(b) Observations on the implementation of article**

Finland appears to be in compliance with article 44(1) of the Convention.

**Article 44. Extradition**

**Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

As a general rule, extradition from Finland is possible only if the conduct in question is an offence in Finland. UNCAC-based offences are considered no exception in this regard.

**(b) Observations on the implementation of article**

Finland appears to be in compliance with article 44(2) of the Convention.

**Article 44. Extradition**

**Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

By virtue of Act of Parliament no.466/2006, through which UNCAC has acquired the force of law in the Finnish legal system, Finland ensures compliance with this provision.

Additionally, Section 4(3) of the Extradition Act establishes that

*“where the request for extradition includes several acts and the prerequisites referred to above are fulfilled for any of them, extradition may be granted also for the part of those other acts which, or the acts corresponding to, are punishable according to Finnish law”.*

**(b) Observations on the implementation of article**

Finland appears to be in compliance with article 44(3) of the Convention.

**Article 44. Extradition**

**Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States*

*Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

By virtue of Act of Parliament no.466/2006, through which UNCAC has acquired the force of law in the Finnish legal system, Finland ensures compliance with this provision.

In particular, existing extradition treaties between Finland and other UNCAC States Parties are deemed to include UNCAC- based offences as extraditable offences.

Presently, no extradition treaties are under negotiation.

Finland cannot point to any case in which the issue of the political offence exception arose in the context of an extradition proceeding. Under section 6 of the Extradition Act,

*“Extradition shall not be granted for a political offence. However, where a political offence includes or is connected with an offence not political by nature and the act as a whole cannot be regarded as an offence of a predominantly political nature, extradition shall be permissible”.*

In practice, whether or not an offence is considered to be a political one would be decided on a case-by-case basis.

More in general, officials from the Ministry of Justice informed the review team that so far no extradition case involving persons sought for corruption-related has been handles by Finland.

**(b) Observations on the implementation of the article**

Section 6 of the Extradition Act would appear to conflict with article 44(4) of the Convention, according to which “a State Party whose law so permits, in cases it uses this Convention as the basis for extradition, *shall not consider any of the offences established in accordance with this Convention to be a political offence*”. In this respect, Finland argues that its direct application of the Convention (through Act no.466/2006) ensures that no Convention-based offences will be considered as a political offence, and explained that such conflict could be avoided to the extent that Act no. 466/2006 would prevail as *lex specialis* over the generally applicable provision of section 6 of the Extradition Act.

The explanation above was deemed to be satisfactory.

**Article 44. Extradition**

**Paragraphs 5 and 6**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Since Finland does not make extradition dependant on the existence of a treaty, the above provisions are irrelevant/ inapplicable in the framework of its legal system.

**(b) Observations on the implementation of the article**

The point made by State under review about the irrelevance of the present provision in the context of the Finnish legal system was accepted.

**Article 44. Extradition**

**Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

**(a) Summary of information relevant to reviewing the implementation of the article**

By virtue of Act of Parliament no.466/2006, through which UNCAC has acquired the force of law in the Finnish legal system, Finland ensures compliance with this provision.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 44(7) of the Convention.

**Article 44. Extradition**

**Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Conditions and procedures regulating extradition to and from Finland are found in the Extradition Act (456/1970) (full text annexed).

In particular:

- According to section 3 of the Act, an offender may be extradited for an offence committed in Finland, on a Finnish vessel or in a Finnish aircraft only if this is to be deemed appropriate for the legal investigation of the offence and the expected punishment would not be essentially different from what it would have been in Finland.
- Under section 4, the minimum sentence, had the offence been committed in Finland, should be one year imprisonment.
- No one may be extradited for a military offence (section 5).
- No one may be extradited for a political offence, unless this offence is a minor element of the totality of the offence (section 6).

- No one may be extradited if he or she might be persecuted on the basis of his or her race, nationality, religion, political belief, membership in a social group or political reasons (section 7).
- No one may be extradited if this would be unreasonable in view of his or her age, health or other personal circumstances (section 8).

In Finland, extradition requests are rarely received and even more rarely rejected. Whenever this happened, it was due to procedural reasons, or the evidence provided by the requesting State was not sufficient to prove that the sought person had committed the offence on probable grounds.

According to Section 2 of the Extradition Act, nationals of Finland cannot be extradited. Their surrender is only permissible within the EU and in the framework of the European Arrest Warrant.

Finland is bound by the following extradition agreements:

- 1957 Council of Europe Extradition Convention;
- multilateral agreement on extradition between Nordic countries;

**(b) Observations on the implementation of the article**

Finland addressed the reviewers' concern that the notion of "personal circumstances" as a ground for refusing extradition might be too vague by explaining that this notion refers to individual circumstances in which the person in question finds him- or herself: family ties, work history, and how long he or she has lived in Finland – a host of factors.

This explanation was deemed to be satisfactory.

**Article 44. Extradition**

**Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review confirmed that it is in compliance with this article by referring to a two-page description of extradition to and from Finland provided in a Council of Europe publication, PC-OC / Inf 4, 15 February 1999, "European Convention on Extradition. A Guide to Procedures".

In general, Finland has been a strong supporter of the ongoing work within the European Union on good praxis, and seeks to apply these more widely. At the same time, it argued that it was not in a position to cite any relevant legal text since the provision in question is one of practice and not of legislation.

**(b) Observations on the implementation of the article**

Concerning the evidentiary thresholds which Finland needs in order to extradite suspects, Finland indicated that, in cases where the 1957 Council of Europe Extradition Convention applies, an arrest warrant is per se regarded as sufficient. In other cases, the competent authorities would need to be satisfied that the offence was committed based on



the evidentiary threshold of the probable cause (based on clear evidence laid out in the request.)

The reviewers are of the opinion that the “probable cause” is a rather high evidentiary threshold, typical of some Anglo-Saxon legal systems, whereby the requesting State is expected to “almost” prove the commission of the act. The Finnish authorities confirmed that this level of evidence compares with the one needed for the prosecution to bring a case to court. There is therefore some concern that the probable cause requirement might place on requesting states too high a burden to prove, substantially leading to rejections of the requests. As a matter of fact, in its answer under article 44(5), Finland stated that, in the rare occasions where extradition requests were rejected, this was due to procedural reasons, namely that the evidence provided was not sufficient to show that the person in question had committed the offence on probable grounds.

The review of Finland carried out in the context of the OECD Convention on Combating Bribery of Foreign Public Officials appears to substantially come to the same conclusion. In such report, in particular, the following was observed: “In Finland, the process for extradition in the absence of a treaty is significantly different than the practice where a treaty applies. Where there is no applicable treaty and extradition is requested for the purpose of enforcing a sentence, it is necessary to consider the adequacy of the evidence. Similarly, where there is no applicable treaty and extradition is requested for the purpose of trying the person concerned, the Finnish authorities are required to undertake an investigation and become involved in the actual weighing of evidence. The lead examiners consider that this is a very high standard to meet, in particular where the offence was committed abroad and all or most of the evidence is available in a foreign jurisdiction. In addition, since Finland does not consider the Convention to be a legal basis for extradition in respect of the offence of bribing a foreign public official, the non-treaty practice will apply in respect of requests for extradition from Parties to the Convention where there is no applicable treaty” (see OECD Report, May 2002, Phase 2).

For the reasons mentioned above, it is recommended that Finnish law-making authorities consider the possibility to lower the evidentiary standard based on the probable cause as appears in the Extradition Act.

#### **Article 44. Extradition**

##### ***Paragraph 10***

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review confirmed compliance with this article by citing Section 19 of the Extradition Act (456/1970). According to this provision, the person in question may be taken into custody in order to promote the investigation and ensure extradition. According to Section 20, the local court is to consider the legality of the custody in the same way as the legality of pre-trial custody.

Since relatively few extradition cases have been handled in Finland, and each case is unique, statistics on periods of custody pending extradition proceedings may be

misleading. However, a period of four to five months in custody pending extradition should be considered as the usual one.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 44(10) of the Convention.

**Article 44. Extradition**

**Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Finland applies the so called “*aut dedere aut judicare*” principle through legal praxis developed on the basis of art. 6(2) of the Council of Europe Extradition Convention.

More generally, compliance with this principle can be inferred through the application of Chapter 1, Section 7(1) of the Finnish Criminal Code which establishes that

*“Finnish law applies to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland”.*

Technically, according to Chapter 1, Section 12(1)(1) of the Criminal Code, “a criminal case may not be investigated in Finland without a prosecution order by the Prosecutor-General, where the offence was committed abroad.”

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 44(11) of the Convention.

**Article 44. Extradition**

**Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The possibility envisaged in article 44(12) of the Convention is not applicable in the context of the Finnish legal system. The extradition of a Finnish citizen is only possible on the basis of the European Arrest Warrant.



**(b) Observations on the implementation of the article**

The review team accepted the conclusion that the provision under review is inapplicable in the context of the Finnish legal system.

**Article 44. Extradition**

**Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review mentioned that the Act on International Cooperation in the Enforcement of Certain Penal Sanctions (21/1987) (section 8), allows for a sanction imposed by a foreign court to be converted into a sanction to be imposed in Finland.

In particular, a sentence must be converted into a form recognized by Finnish criminal law: a fine, a day-fine, community service, conditional imprisonment, unconditional imprisonment, and so on. Chapters 2 – 2c of the Criminal Code set certain limits on how large a fine, and how long a community service order or imprisonment sentence can be. For this reason, a sentence must be converted before being enforced.

**(b) Observations on the implementation of the article**

The reviewers could not properly evaluate the implementation of the current provisions because the Act on International Cooperation in the Enforcement of Certain Penal Sanctions (21/1987) is only available in the Finnish and Swedish languages.

It is therefore recommended that the above act be made available in English.

**Article 44. Extradition**

**Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Finland’s compliance with “fair treatment” guarantees at all stages of the proceedings and other applicable human rights stems from basic procedural law and constitutional principles.

Relevant constitutional provisions are annexed.

In addition, Finland is a state party to the International Covenant on Civil and Political Rights as well as the Council of Europe Convention on Human Rights.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 44(14) of the Convention.

## **Article 44. Extradition**

### **Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review referred to its answer under article 44(8), in particular Section 7 of the extradition act whereby “no one may be extradited if he or she might be persecuted on the basis of his or her race, nationality, religion, political belief, membership in a social group or political reasons”.

Finnish extradition authorities would consider the personal circumstances and claims of the sought person as well as the situation of the requesting State. Finland's Ministry for Foreign Affairs closely monitors political and other fundamental rights around the world, and would be consulted, where necessary, in the framework of an extradition procedure.

In assessing the risk of persecution, Finnish authorities have considerable discretion. No pre-established rule is applied. In practice, few cases have arisen so far.

#### **(b) Observations on the implementation of the article**

It was noted that the risk of persecution based on sex and ethnic origin (as appears in the text of the Convention) is not explicitly dealt with in the Extradition Act.

However, the State under review argued that those grounds would be covered through the notion of “personal circumstances” set forth in Section 8 as follows: “A person shall not be extradited, where extradition would be unreasonable for humanitarian reasons in view of the age, health or other personal circumstances of the person concerned or in view of special conditions”.

The explanation given was deemed to be satisfactory.

## **Article 44. Extradition**

### **Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Extradition Act contains an exhaustive list of grounds for refusal, which means that non-listed grounds cannot be invoked to reject an extradition request. In particular, the circumstance that the offence in question involves fiscal matters is not contemplated among the possible grounds for refusal.

#### **(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 44(16) of the Convention.

## **Article 44. Extradition**

### ***Paragraph 17***

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The State under review considers such duties of “consultation as a matter of “good practice”, strongly advocated by Finland, and a reflection of international comity. In addition, in respect of UNCAC offences, the fact that UNCAC has been brought into force by an Act of Parliament means that this article would also be followed in law, not only in practice.

#### **(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 44(17) of the Convention.

### **Article 44. Extradition**

#### ***Paragraph 18***

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

While respecting its engagements in the context of the Nordic and Council of Europe extradition arrangements and agreements as well as the EU framework decision on the European Arrest Warrant, Finland is not currently negotiating any additional agreements in this area.

#### **(b) Observations on the implementation of the article**

The reviewers take note of the fact that Finland is not currently negotiating any additional extradition agreements. While recognising that Finland does not need a treaty basis in order to provide extradition, it is advised that it continues to look for opportunities to actively engage in bilateral and multilateral extradition arrangements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of extradition.

### **Article 45. Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Finland confirmed that such transfer is possible under the Extradition Act (456/1970) and the Act on International Cooperation in the Enforcement of Penal Sanctions (21/1987) even in the absence of a treaty.

In addition, such transfer is possible on the basis of the Council of Europe Convention on the transfer of sentenced persons, and its first additional protocol. The Convention was brought into force by a simple Act in 1987 (Act 312/1987).

**(b) Observations on the implementation of the article**

As the Act on International Cooperation in the Enforcement of Penal Sanctions (21/1987) is not available in the English language, without additional information the review team could not properly evaluate the implementation of the current provision.

**Article 46. Mutual legal assistance**

**Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Compliance with article 46 (as was the case with article 44 on extradition) is ensured by Finland's direct application of the Convention following the adoption of Act no.466/2006.

Finland's Act on International Legal Assistance in Criminal Matters (5 January 1994/4) is the generally applicable law defining conditions and procedures (including the identification of the Central Authority).

The scope of application of the above Act includes any criminal offence, whether the request comes from abroad or is addressed to a foreign country.

Regarding, in particular, the handling of corruption-related offences, UNCAC provisions may become applicable and, in case of conflict with Act 1994/4, would apply as "*lex specialis*".

In practical terms, the execution of a request for MLA by Finland is easier when it originates from a Nordic country. Among the Nordic countries, for example, no issues of admissibility of the evidence are raised with the result that Finland accepts all evidence collected in Nordic countries. In comparison, vis-à-vis other countries the prompt and effective execution of the request depends on the requesting country, the circumstances of the case, etc. Besides from the Nordic countries, an exceptionally high level of cooperation takes place with Estonia.

Overall, cases of corruption requiring international assistance on the part of Finland have been few. As was reported in 2010 in the framework of the OECD evaluation (Phase 3), in relation to foreign bribery cases in Finland:

- Requests made of Parties to the OECD Convention (Austria, Canada, Germany, Slovenia and the United Kingdom) were responded to within a reasonable period (one to three months);
- Requests made of other countries were made in reliance of UNCAC and were in most cases responded to within a timeframe of one to five months (in the case of requests to Costa Rica, Cyprus, Liechtenstein and Panama), except in the case of requests to Thailand (with no response) and Egypt (which refused to provide legal assistance, citing in doing so Article 46(21)(b) of UNCAC);<sup>2</sup>

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<sup>2</sup> That is, on the basis of sovereignty, security, *ordre public* or other essential interests.

- In the case of one investigation, a Joint Investigation Team (JIT) was established with two Convention Parties, thereby removing the need for the mechanism of MLA between the three JIT countries;
- Two other cases concerning allegations of foreign bribery are at very early stages of investigation and have yet not involved the need for legal assistance.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 46(1) of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

By virtue of Act of Parliament no.466/2006, through which UNCAC has acquired the force of law in the Finnish legal system, Finland ensures compliance with this provision. (In its response to article 26 of the Convention, Finland attached excerpts of its Criminal Code establishing the principle of corporate criminal liability).

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 46(2) of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 3**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*
- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

By virtue of Act of Parliament no.466/2006, through which UNCAC has acquired the force of law in the Finnish legal system, Finland ensures compliance with this provision.

Chapter 1, Section 1(2) of the Act on International Legal Assistance in Criminal Matters basically reproduces the scope of MLA to be afforded under UNCAC and reads as follows:

“(2) *International assistance in criminal matters, as referred to in this Act, shall include:*

*(1) service of decisions, summonses, notices and other judicial documents relating to a criminal matter, including summonses to appear before an authority of the requesting State;*

*(2) hearing of witnesses, experts and parties, obtaining of expert opinions, inspections, procuring and transmitting documents and objects to be produced as evidence, as well as the taking of any other evidence relating to a criminal matter;*

*(3) the use of coercive measures in order to obtain evidence or to secure the enforcement of a confiscation order;*

*(4) institution of criminal proceedings;*

*(5) communication of extracts from and information relating to criminal records required in a criminal matter; and*

*(6) any other necessary assistance in a criminal matter, provision of information on law as well as any other forms of mutual co-operation”.*

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 46(3) of the Convention.

**Article 46. Mutual legal assistance**

**Paragraphs 4, 5, 6 and 7**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

*6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.*

*7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The fact that UNCAC provisions for an integral part of the Finnish legal system, following Act of Parliament no. 466/2006, means that the above provisions have the force of law and will consequently be fully applied.

As far as article 46(4) is concerned, the competent authority empowered to transmit information to another State without prior request is the National Bureau of Investigation.

In addition to the European Convention on Mutual Assistance in Criminal Matters, Finland is a Party to the following agreements:

Bilateral mutual legal assistance agreements:

- Australia (Treaties of Finland 36/1994);
- Poland (Treaties of Finland 68/1981);
- Hungary (Treaties of Finland 40/1982);
- Ukraine (Treaties of Finland 82/1994);
- Russian Federation (Treaties of Finland 48/1980);
- United States of America (Treaties of Finland 8/2010).

European Union instruments

- Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States (Treaties of Finland 57/2004) and supplementary protocols;
- Convention on mutual assistance and cooperation between customs administrations (Naples II) (Treaties of Finland 148/2004);
- Agreement of 25 June 2003 between the EU and the USA on mutual legal assistance in criminal matters;
- Framework decision (2003/577/JHA) and Act (540/2005) on the execution in the EU of orders freezing property or evidence;
- Framework decision (2006/783/JHA) and Act (222/2008) on the application of the principle of mutual recognition to confiscation orders;
- Framework Decision (2008/978/JHA) on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the current provisions of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 8**



8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

**(a) Summary of information relevant to reviewing the implementation of the article**

The fact that UNCAC forms an integral part of the Finnish legal system, following Act of Parliament no.466/2006, means that this provision has the force of law and can be directly applied by the competent national authorities.

As Finland mentioned in the response to article 40 of the Convention, section 141(2) of the Credit Institutions Act (121/2007) establishes the obligation for credit institutions to provide pre-trial investigation and prosecutorial authorities with information that these authorities need for the investigation of an offence. Section 141(2) is interpreted to imply that pre-trial investigation and prosecutorial authorities can also request that bank secrecy be lifted beyond the scope of a domestic investigation, i.e. when banking information has been demanded by a foreign State.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 46(8) of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 9**

9. a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

**(a) Summary of information relevant to reviewing the implementation of the article**

The fact that UNCAC forms an integral part of the Finnish legal system, following Act of Parliament no.466/2006, means that this provision has the force of law and can be directly applied by the competent national authorities.

In the framework of the UNODC Pilot Review Programme, Finland communicated to the review team the text of Section 15(1) of its Act on International Legal Assistance in Criminal Matters (1994/4), which reads as follows:

“Restrictions on coercive measures

Where coercive measures are requested or where the request otherwise involves the use of coercive measures under the Coercive Measures Act (1987/450), such measures shall not be used, where not permitted under Finnish law had the offence to which the request relates been committed in Finland in similar circumstances.”



Consequently, assistance that does not involve coercive action may be provided by Finland, even in absence of dual criminality. In this respect, Finnish law appears to be consistent with article 46 (9) b of UNCAC.

The State under review considered “coercive measures” to be any measures which an authority may take even without the consent of the person in question. The most important such measures are: taking a person into custody; restricting a person's freedom of movement (including his or her freedom to leave the country); seizure; conducting electronic surveillance or conducting a house search.

#### **(b) Observations on the implementation of the article**

Finland appears to be in compliance with article 46(9) of the Convention.

### **Article 46. Mutual legal assistance**

#### **Paragraphs 10, 11 and 12**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*a) The person freely gives his or her informed consent;*

*b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

*11. For the purposes of paragraph 10 of this article:*

*a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The fact that UNCAC forms an integral part of the Finnish legal system, following Act of Parliament no.466/2006, means that these provisions have the force of law and can be directly applied by competent national authorities.

The transfer of a person detained or serving a sentence from one State Party to another for the purposes of the current article is treated in Finland as an MLA issue.

Consequently, the Ministry of Justice is the entity serving as the central authority in this respect.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provisions of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Finland confirmed that the Ministry of Justice serves as the “central authority” for purposes of mutual legal assistance. This information has been duly communicated to the Secretary General of the United Nations.

When Finland is the requesting country, Section 5 of the Act on International Legal Assistance in Criminal Matters stipulates that the request may either be channelled through the Central Authority, or sent directly by the court or the competent prosecutorial or investigative authority which is seeking assistance. This would depend on the international treaty between Finland and the foreign state. Where necessary, the Ministry of Justice may transmit the request to the foreign State through the Ministry for Foreign Affairs.

When Finland is the requested country, under Section 4 of Act the request may be submitted to the Central Authority or directly to the competent authority. If the request is received by the Ministry of Justice, this latter will transmit it promptly to the authority which is competent to execute the request, unless the execution of the request falls within the competence of Ministry of Justice. As highlighted in the context of the OECD evaluation, in foreign bribery cases MLA requests are dealt with by the National Bureau of Investigation. There is no requirement that requests be addressed to it through diplomatic channels.

Finally, Finland accepts that, in urgent circumstances, requests be addressed to it through Interpol.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

## **Article 46. Mutual legal assistance**

### **Paragraph 14**

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Finland confirmed compliance with this article, which also appears to be in line with Section 7(1) of the Act on International Legal Assistance in Criminal Matters as follows:

*A request for assistance transmitted by an authority of a foreign State to a Finnish authority may be made in writing, as a recording or orally; it may also be transmitted in an electronic message. Nonetheless, where the service of summons, notice, decision or other document is requested, the request shall be accompanied or supplemented by the document to be served. Where the authenticity of the request or any accompanying document is doubtful the Ministry of Justice or the competent authority may request the necessary confirmation in writing. The request and the accompanying documents are exempt from legalisation or any similar formality.*

Finland has already communicated to the Secretary General the language considered to be acceptable when it receives a request of legal assistance.

#### **(b) Observations on the implementation of the article**

According to the Decree on Mutual Legal Assistance in Criminal Matters, statute no. 13/1994, section 9:

Section 9. *The language to be used in requests and documents.* A request by an authority of a foreign state for mutual legal assistance and the related documents or their translations may, instead of in Finnish or Swedish, be in Norwegian, Danish, English, French or German.

## **Article 46. Mutual legal assistance**

### **Paragraph 15**

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

**(a) Summary of information relevant to reviewing the implementation of the article**

Finland confirmed compliance with this article, which also appears to be in line with Section 7(2) of the Act on International Legal Assistance in Criminal Matters as follows:

*“(2) The request shall, to the extent necessary for the proper execution of the request, indicate the following:*

*(1) the authority making the request and the court or other authority where the criminal matter on which the request is based is subject to proceedings or investigations;*

*(2) the object of and reason for the request;*

*(3) the necessary information available on the persons concerned;*

*(4) a description of the offence on which the request is based and the applicable provisions of criminal law;*

*(5) a brief summary of the criminal act and the related facts, except where the service of a document is requested;*

*(6) a description of the evidence sought and information on documents and evidence; as well as*

*(7) clarification of allowances and expenses to which a witness or expert requested to appear before an authority of the requesting State is entitled.*

*(3)The request may be executed although the requirements provided for in subsection (1) or (2) are not fully met, where the defects do not prevent the execution of the request”.*

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provisions of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 16**

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Finland confirmed compliance with this article while stating that no such situation has ever arisen in practice.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The fact that UNCAC forms an integral part of the Finnish legal system, following Act of Parliament no.466/2006, means that this provision has the force of law and can be directly applied by the competent national authorities.

Notwithstanding this, Section 11 of the Act on International Legal Assistance in Criminal Matters reads:

*“Compliance with a particular procedure specified in the request:*

*(1) The request for assistance shall be executed following a particular form or procedure specified in the request, unless such a form or procedure would be incompatible with fundamental principles of Finnish legislation and there are no provisions to the contrary or international obligations binding on Finland do not otherwise require.*

*(2) Where the request cannot be executed in compliance with the procedure specified in the request, the authority of the requesting foreign State shall be promptly notified thereof and informed of the conditions on which the request can be executed, and the authority shall be asked whether the request shall be executed accordingly”.*

Finland is not aware of any request that was executed by its authorities in ways different from those specified in the request due to domestic legal requirements.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Finland confirmed that it is in a position to permit hearings of individuals mentioned in article 46(18) to take place by video conference. This is possible by virtue of Finland’s direct application of article 46(18).

At the time of the present review, no request had been either submitted or received by Finland in which the hearing of a witness or expert by video-conference was involved.

In theory, if Finland had to request assistance to another country through videoconference, issues relating to the admissibility of video-recorded statements as evidence in its criminal proceedings would follow the principle of free discretion of evidence (Finland does not have a “law of evidence” for the purpose of determining what is admissible and what is not). As to the setting of technical standards for reliability and verification, Finnish judicial practice requires encrypted transmission.

The case of a witness who gives false evidence in domestic proceedings via video conference would be regulated by the law of the country in which the evidence was

physically given. When, instead, Finland acted as the requested country, criminal liability for perjury offences would be established under Finnish law.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The fact that UNCAC forms an integral part of the Finnish legal system, following Act of Parliament no.466/2006, means that this provision has the force of law and can be directly applied by the competent national authorities.

Finland confirmed the absence of cases in which exculpatory evidence was disclosed by its authorities in derogation from the general duty mentioned in article 46(19).

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 46. Mutual legal assistance**

**Paragraphs 20, 21, 22 and 23**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

*23. Reasons shall be given for any refusal of mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**



The fact that UNCAC forms an integral part of the Finnish legal system, following Act of Parliament no.466/2006, means that this provision has the force of law and can be directly applied by the competent national authorities.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provisions of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

In providing information on the customary length of time between receiving requests for mutual legal assistance and responding to them, Finland confirmed that it is normally able to respond within two months. However, this also depends on the type of request.

Concerning the customary length of time between submitting requests for mutual legal assistance and receiving a response to them, the experience of Finland varies depending on the country, the case and the applicable agreement. It was noted that cooperation with the European Union and, to a lesser degree, other Council of Europe states which have tended to adopt similar legislation and have accepted similar standards of good practice, proceeds rather quickly, the time frame usually being a few months. Within the European Union, in particular, the shift of cooperation from central authorities of different countries to direct contacts has meant that routine requests may take only a few weeks to be executed.

Outside European Union and the Council of Europe spheres, fewer requests are sent, thus it is more difficult to give a precise answer on the "customary length of time" needed. In any case, several months are needed.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 46. Mutual legal assistance**

**Paragraphs 25, 26 and 27**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such*

*terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The fact that UNCAC forms an integral part of the Finnish legal system, following Act of Parliament no. 466/2006, means that this provision has the force of law and can be directly applied by the competent national authorities.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The fact that UNCAC forms an integral part of the Finnish legal system, following Act of Parliament no.466/2006, means that this provision has the force of law and can be directly applied by the competent national authorities.

Finland confirmed that there has not been any recent arrangement with a foreign State in which costs were not covered (only) by the requested State.

As to the distribution of costs in the context of mutual legal assistance via videoconference, this methodology continues to be exceptional. Where videoconferences have been arranged (as with Estonia), both countries already had in place the necessary technical equipment and procedures. In these cases, the costs would tend to be nominal, and would not call for the consultations referred to above.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provisions of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 29**



29. *The requested State Party:*

a) *Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

b) *May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The State under review made reference to the Openness of Government Activities Act (621/1999) as well as to the constitutional principle whereby all documents in the possession of the authorities is public, unless an exception has explicitly been made by an Act of Parliament. If a State Party requests records, documents or information in the possession of the authorities, these will be provided in the same way and on the same grounds as to any individual.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 46. Mutual legal assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Presently, no negotiations are ongoing or plans have been made by Finland to conclude agreements with a view, in particular, to strengthen the provisions on mutual legal assistance contained in article 46 of the Convention.

**(b) Observations on the implementation of the article**

The reviewers take note of the fact that Finland is not currently negotiating any additional MLA agreements. At the same time, it is recommended that this possibility is not ruled out and that the competent authorities of Finland continue to look for opportunities to actively engage in bilateral and multilateral MLA arrangements with foreign countries

**Article 47. Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Section 19 of the Act on International Legal Assistance in Criminal Matters (4/1994) allows for proceedings to be transferred to Finland upon the request of a foreign authority.

The text of Section 19 (Request to initiate criminal proceedings) is the following:

“Criminal proceedings may be initiated in Finland in accordance with the rules of Finnish law on the exercise of jurisdiction in criminal cases pursuant to a request made under this Act by an authority of a foreign State”.

No such transfers have ever taken place to date.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 48. Law enforcement cooperation**

***Subparagraph 1 (a)***

*States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

***Subparagraph 1 (b)***

*To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

***Subparagraph 1 (c)***

*To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

***Subparagraph 1 (d)***

*To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

***Subparagraph 1 (e)***

*To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

***Subparagraph 1 (f)***

*To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**Paragraph 2**

*With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

### **Paragraph 3**

*States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

##### **- Law enforcement cooperation with Nordic countries:**

At the regional level, Finland highlighted the exceptional level of cooperation with Nordic Countries based, among others, on the 1972 Agreement on cooperation among Nordic police authorities (revised in 2002). Furthermore, the Nordic police forces have set up a joint network of liaison officers around the world. A liaison officer for any of the Nordic countries may act in behalf of the police of any of the other Nordic countries. Such arrangement has been internationally recognized as a good practice.

##### **- Law enforcement cooperation in the Baltic region:**

The 2009 Annual Police report of Finland provided information about the deepening of regional cooperation within the Baltic Sea Task Force. The Task Force intends to continue its work in various projects and in the setting up of joint investigation teams. It also engages in intensified cooperation with Europol. Finland assumed responsibility for coordinating the Task Force's activities in 2009. In practice, the work was carried out in the Ministry of the Interior Police Department. In the future, this task will be assumed by the National Police Board. An EU Strategy for the Baltic Sea Region was adopted by the European Union. In this connection, an attempt will be made to achieve more in-depth cooperation between the states in the Baltic Sea region.

##### **- Law enforcement cooperation within the EU:**

As an EU Member State, Finland cooperates extensively with other EU countries in the area of law enforcement, both bilaterally and through Europol. Finland stressed, in particular, the European Judicial Network, which is developing a general database for the sharing of information. It was noted that the EU is further developing a more general database intended to be for the use of the public, and will also contain information on States' domestic legal matters.

Additionally, reference was made to the Schengen Information System, which contains an extensive database placed at the disposal of the law enforcement agencies of Schengen countries.

It is worth noting, also, that Finland acts through Framework decision (2006/960/JHA) and Act (26/2009) simplifying the exchange of information and intelligence between law enforcement authorities in the EU.

- Law enforcement cooperation outside the EU:

Outside the EU, cooperation takes place on an ad hoc basis. Interpol is used as the main channel. Parallel to this, Memoranda of Understanding have been prepared with the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Russian Federation and Turkey, and are being prepared with China, Serbia and Vietnam with.

Finnish Police Liaison Officers are posted in various countries and international organizations. In particular: five liaison officers are posted in the Russian Federation, one each in Estonia, Spain and China, two at Europol (in the Hague) and one at Interpol (in Lyon).

Finally, Finland considers UNCAC as the basis for mutual law enforcement cooperation (although UNCAC is deemed to only be one of several possible bases for such cooperation).

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 49. Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Finland indicated that it has established joint investigation teams on the basis of relevant EU instruments.

Finland is one of the most experienced users of joint investigation teams in the EU. Since 2004, it has taken part in a total of 28 such teams, of which three have been established to investigate corruption-related offences.

In July 2010, the Finnish-owned cargo ship m/v Arctic Sea was hijacked in the Swedish territorial waters. Finland was involved in the investigation, as the Finnish company operating the vessel was a victim of the suspected hijacking. The National Bureau of Investigation played an active role in setting the large joint investigation team. The team was joined by Latvia, Malta, Sweden, Estonia, Europol, and Eurojust. There has been a significant exchange of information between the Finnish and Russian authorities. Setting

up a joint investigation team has facilitated the exchange of information by eliminating the need to send individual requests for executive assistance between the team members.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.

**Article 50. Special investigative techniques**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Provisions on electronic surveillance are contained in chapter 5a of the Coercive Measures Act (450/1987) and sections 31b - 31f of the Police Act (493/1995). Sections 31a and 32a of the Police Act also address undercover activity, and section 31b provides for the right of a police officer to purchase property (such as stolen goods) in the course of an investigation.

Finland indicated that arrangements for using such special investigative techniques in the context of cooperation at the international level exist within the so-called Schengen accords structure, within the wider scope of the EU.

Finland has assessed the effectiveness of the measures adopted to encourage agreements or arrangements to facilitate cross-border cooperation in the use of special investigative techniques, as it is under continuous review by Europol and other EU bodies.

**(b) Observations on the implementation of the article**

Finland appears to be in compliance with the present provision of the Convention.